Y4.J 89/1:103-68

NORTHEAST INTERSTATE DAIRY COMPACT

HEARING

BEFORE THE

SUBCOMMITTEE ON ADMINISTRATIVE LAW
AND GOVERNMENTAL RELATIONS

OF THE

COMMITTEE ON THE JUDICIARY
HOUSE OF REPRESENTATIVES

ONE HUNDRED THIRD CONGRESS

SECOND SESSION

ON

H.R. 4560

NORTHEAST INTERSTATE DAIRY COMPACT

AUGUST 3, 1994

Serial No. 68

GOV'T. DEPOSITORY
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NORTHEAST INTERSTATE DAIRY COMPACT

WEDNESDAY, AUGUST 3, 1994

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON ADMINISTRATIVE LAW
AND GOVERNMENTAL RELATIONS,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The subcommittee met, pursuant to notice, at 10 a.m., in room 2237, Rayburn House Office Building, Hon. John Bryant (chairman of the subcommittee) presiding.

Present: Representatives John Bryant, Barney Frank, David Mann, Melvin L. Watt, George W. Gekas, Bob Inglis, and Bob Goodlatte.

Also present: Paul Drolet, counsel; Nichole Jenkins, assistant counsel; and Cynthia Blackston, chief clerk.

OPENING STATEMENT OF CHAIRMAN BRYANT

Mr. BRYANT. The subcommittee will come to order, and we will proceed to a hearing on H.R. 4560, the Northeast Interstate Dairy Compact.

The Subcommittee on Administrative Law and Governmental Relations will hold a hearing today on this matter which we had originally assumed would be a little less controversial than apparently it is turning out to be. We welcome all of the witnesses that have come here today to testify, including the Members.

The bill before the subcommittee would grant congressional approval for an interstate commission with authority to stabilize and increase dairy farm prices in order to secure the long-term viability of the New England dairy industry.

The Northeast Interstate Dairy Compact consists of six Northeastern States, including Vermont, New Hampshire, Maine, Connecticut, Rhode Island, and Massachusetts. Six compact State legislatures have enacted identical compact language.

I would like to commend Congressman Olver's commitment and persistence in moving this legislation, as well as that of Congressman Sanders and Congresswoman Johnson and others that are not yet here.

[The bill, H.R. 4560, follows:]

I

103D CONGRESS
2D SESSION

H. R. 4560

To provide the consent of Congress to the Northeast Interstate Dairy Compact.

IN THE HOUSE OF REPRESENTATIVES

JUNE 9, 1994

Mr. OLVER (for himself, Mrs. JOHNSON of Connecticut, Mr. NEAL of Massachusetts, Mr. ANDREWS of Maine, Mr. BLUTE, Ms. DELAURO, Mr. GEJDENSON, Mr. KENNEDY, Mrs. KENNELLY, Mr. MACHTLEY, Mr. MARKEY, Mr. MCHUGH, Mr. MEEHAN, Mr. REED, Mr. SANDERS, Ms. SNOWE, Mr. STUDDS, Mr. SWETT, Mr. TORKILDSEN, Mr. ZELIFF, and Mr. FRANKS of Connecticut) introduced the following bill; which was referred to the Committee on the Judiciary

---

A BILL

To provide the consent of Congress to the Northeast Interstate Dairy Compact.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. CONGRESSIONAL CONSENT.

That Congress hereby consents to the Northeast Interstate Dairy Compact entered into between the States of Vermont, New Hampshire, Maine, Connecticut, Rhode Island, and Massachusetts, which Compact is substantially as follows:

ARTICLE I. STATEMENT OF PURPOSE, FINDINGS AND DECLARATION OF POLICY

§1. STATEMENT OF PURPOSE, FINDINGS AND DECLARATION OF POLICY

The purpose of this Compact is to recognize by constitutional prerequisite the interstate character of the northeast dairy industry and to form an interstate Commission for the northeast region. The mission of the Commission is to take such steps as are necessary to assure the continued viability of dairy farming in the northeast, and to assure consumers of an adequate, local supply of pure and wholesome milk.

The participating States find and declare that the diary industry is the paramount agricultural activity of the northeast. Dairy farms, and associated suppliers, marketers, processors and retailers, are an integral component of the region's economy. Their ability to provide a stable, local supply of pure, wholesome milk is a matter of great importance to the health and welfare of the region.

The participating States further find that dairy farms are essential to the region's rural communities and character. The farms preserve open spaces, sculpt the landscape and provide the land base for a diversity of recreational pursuits. In defining the rural character of our

communities and landscape, dairy farms also provide a major draw for our tourist industries.

By entering into this Compact, the participating States affirm that their ability to regulate the price which northeast dairy farmers receive for their product is essential to the pubic interest. Assurance of a fair and equitable price for dairy farmers ensures their ability to provide milk to the market and the vitality of the northeast dairy industry, with all the associated benefits.

Recent, dramatic price fluctuations, with a pronounced downward trend, threaten the viability and stability of the northeast dairy region. Historically, individual State regulatory action has been an effective emergency remedy available to farmers confronting a distressed market. The Federal order system, implemented by the Agricultural Marketing Agreement Act of 1937, establishes only minimum prices for dairy products, without preempting the power of States to regulate milk prices above the minimum levels so established. Based on this authority, each State in the region has individually attempted to implement at least 1 regulatory program in response to the current dairy industry crisis.

In today's regional dairy marketplace, cooperative, rather than individual State action may address more effectively the market disarray. Under our constitutional

system, properly authorized, States acting cooperatively may exercise more power to regulate interstate commerce than they may assert individually without such authority. For this reason, the participating States invoke their authority to act in common agreement, with the consent of Congress, under the Compact clause of the Constitution.

In establishing their constitutional regulatory authority over the region's fluid milk market by this Compact, the participating States declare their purpose that this Compact neither displace the Federal order system nor encourage the merging of Federal orders. Specific provisions of the Compact itself set forth this basic principle.

Designed as a flexible mechanism able to adjust to changes in a regulated marketplace, the Compact also contains a contingency provision should the Federal order system be discontinued. In that event, the interstate Commission is authorized to regulate the marketplace in replacement of the order system. This contingent authority does not anticipate such a change, however, and should not be so construed. It is only provided should developments in the market other than establishment of this Compact result in discontinuance of the order system.

ARTICLE II. DEFINITIONS AND RULES OF CONSTRUCTION

§ 2. DEFINITIONS

For the purpose of this Compact, and of any supplement or concurring legislation enacted pursuant thereto, except as may be otherwise required by the context:

(1) "Commission" means the Commission established by this Compact.

(2) "Compact" means this interstate Compact.

(3) "Region" means the territorial limits of the States which are or become parties to this Compact.

(4) "Participating State" means a State which has become a party to this Compact by the enactment of concurring legislation.

(5) "Regulated area" means any area within the region governed by and defined in regulations establishing a Compact over-order price or Commission marketing order.

(6) "Pool plant" means any milk plant located in a regulated area.

(7) "Partially regulated plan" means a milk plant not located in a regulated area but having Class I distribution within such area, or receipts from producers located in such area. Commission regulations may exempt plants having such distribu-

tion or receipts in amounts less than the limits defined therein.

(8) "Compact over-order price" means a minimum price required to be paid to producers for Class I milk established by the Commission in regulations adopted pursuant to sections 9 and 10 of this Compact, which is above the price established in Federal marketing orders or by State farm price regulation in the regulated area. Such price may apply throughout the region or in any part or parts thereof as defined in the regulations of the Commission.

(9) "Commission marketing order" means regulations adopted by the Commission pursuant to sections 9 and 10 of this Compact in place of a terminated Federal marketing order or State dairy regulation. Such order may apply throughout the region or in any part or parts thereof as defined in the regulations of the Commission. Such order may establish minimum prices for any or all classes of milk.

(10) "Milk" means the lacteal secretion of cows and includes all skim, butterfat, or other constituents obtained from separation or any other process. The term is used in its broadest sense and may be

further defined by the Commission for regulatory purposes.

(11) "Class I milk" means milk disposed of in fluid form or as a fluid milk product, subject to further definition in accordance with the principles expressed in subsection (b) of section 3.

(12) "State dairy regulation" means any State regulation of dairy prices, and associated assessments, whether by statute, marketing order or otherwise.

§ 3. RULES OF CONSTRUCTION

(a) This Compact shall not be construed to displace existing Federal milk marketing orders or State dairy regulation in the region but to supplement them. In the event some or all Federal orders in the region are discontinued, the Compact shall be construed to provide the Commission the option to replace them with 1 or more Commission marketing orders pursuant to this Compact.

(b) This Compact shall be construed liberally in order to achieve the purposes and intent enunciated in section 1. It is the intent of this Compact to establish a basic structure by which the Commission may achieve those purposes through the application, adaptation and development of the regulatory techniques historically associated with milk marketing and to afford the Commission broad

flexibility to devise regulatory mechanisms to achieve the purposes of this Compact. In accordance with this intent, the technical terms which are associated with market order regulation and which have acquired commonly understood general meanings are not defined herein but the Commission may further define the terms used in this Compact and develop additional concepts and define additional terms as it may find appropriate to achieve its purposes.

ARTICLE III. COMMISSION ESTABLISHED

§ 4. COMMISSION ESTABLISHED

There is hereby created a Commission to administer the Compact, composed of delegations from each State in the region. A delegation shall include not less than 3 nor more than 5 persons. Each delegation shall include at least 1 dairy farmer who is engaged in the production of milk at the time of appointment or reappointment, and 1 consumer representative. Delegation members shall be residents and voters of, and subject to such confirmation process as is provided for in, the appointing State. Delegation members shall serve no more than 3 consecutive terms with no single term of more than 4 years, and be subject to removal for cause. In all other respects, delegation members shall serve in accordance with the laws of the State represented. The compensation, if any, of the

members of a State delegation shall be determined and paid by each State, but their expenses shall be paid by the Commission. Each State delegation shall be entitled to 1 vote in the conduct of the Commission's affairs.

§ 5. VOTING REQUIREMENTS

All actions taken by the Commission, except for the establishment or termination of an over-order price or Commission marketing order, and the adoption, amendment or rescission of the Commission's bylaws, shall be by majority vote of the delegations present. Establishment or termination of an over-order price or Commission marketing order shall require at least a two-thirds vote of the delegations present. The establishment of a regulated area which covers all or part of a participating State shall require also the affirmative vote of that State's delegation. A majority of the delegations from the participating States shall constitute a quorum for the conduct of the Commission's business.

§ 6. ADMINISTRATION AND MANAGEMENT

(a) The Commission shall elect annually from among the members of the participating State delegations a chairperson, a vice-chairperson, and a treasurer. The Commission shall appoint an executive director and fix his or her duties and compensation. The executive director shall serve at the pleasure of the Commission, and, to-

gether with the treasurer, shall be bonded in an amount determined by the Commission. The Commission may establish through its bylaws an executive committee composed of 1 member elected by each delegation.

(b) The Commission shall adopt bylaws for the conduct of its business by a two-third vote, and shall have the power by the same vote to amend and rescind these bylaws. The Commission shall publish its bylaws in convenient form with the appropriate agency or officer in each of the participating States. The bylaws shall provide for appropriate notice to the delegations of all Commission meetings and hearings and of the business to be transacted at such meetings or hearings. Notice also shall be given to other agencies or officers of participating States as provided by the laws of those States.

(c) The Commission shall file an annual report with the Secretary of Agriculture of the United States, and with each of the participating States by submitting copies to the Governor, both houses of the legislature, and the head of the State department having responsibilities for agriculture.

(d) In addition to the powers and duties elsewhere prescribed in this Compact, the Commission shall have the power:

(1) to sue and be sued in any State or Federal court;

(2) to have a seal and alter the same at pleasure;

(3) to acquire, hold, and dispose of real and personal property by gift, purchase, lease, license, or other similar manner, for its corporate purposes;

(4) to borrow money and to issue notes, to provide for the rights of the holders thereof and to pledge the revenue of the Commission a security therefor, subject to the provisions of section 18 of this Compact;

(5) to appoint such officers, agents, and employees as it may deem necessary, prescribe their powers, duties, and qualifications; and

(6) to create and abolish such offices, employments, and positions as it deems necessary for the purposes of the Compact and provide for the removal, term, tenure, compensation, fringe benefits, pension, and retirement rights of its officers and employees. The Commission may also retain personal services on a contract basis.

§ 7. RULEMAKING POWER

In addition to the power to promulgate a Compact over-order price or Commission marketing orders as pro-

vided by this Compact, the Commission is further empowered to make and enforce such additional rules and regulations as it deems necessary to implement any provisions of this Compact, or to effectuate in any other respect the purposes of this Compact.

ARTICLE IV. POWERS OF THE COMMISSION

§8. POWERS TO PROMOTE REGULATORY UNIFORMITY, SIMPLICITY, AND INTERSTATE COOPERATION

The Commission is hereby empowered to:

(1) Investigate or provide for investigations or research projects designed to review the existing laws and regulations of the participating States, to consider their administration and costs, to measure their impact on the production and marketing of milk and their effects on the shipment of milk and milk products within the region.

(2) Prepare and transmit to the participating States model dairy laws and regulations dealing with the inspection of farms and plants, sanitary codes, labels for dairy products and their imitations, standards for dairy products, license standards, producer security programs, and fair trade laws.

(3) Study and recommend to the participating States joint or cooperative programs for the admin-

istration of the dairy laws and regulations and to prepare estimates of cost savings and benefits of such programs.

(4) Encourage the harmonious relationships between the various elements in the industry for the solution of their material problems. Conduct symposiums or conferences designed to improve industry relations, or a better understanding of problems.

(5) Prepare and release periodic reports on activities and results of the Commission's efforts to the participating States.

(6) Review the existing marketing system for milk and milk products and recommend changes in the existing structure for assembly and distribution of milk which may assist, improve, or promote more efficient assembly and distribution of milk.

(7) Investigate costs and charges for producing, hauling, handling, processing, distributing, selling, and for all other services performed with respect to milk.

(8) Examine current economic forces affecting producers, probable trends in production and consumption, the level of dairy farm prices in relation to costs, the financial conditions of dairy farmers,

and the need for an emergency order to relieve critical conditions on dairy farms.

§ 9. EQUITABLE FARM PRICES

(a) The powers granted in this section and section 10 shall apply only to the establishment of a Compact over-order price, so long as Federal milk marketing orders remain in effect in the region. In the event that any or all such orders are terminated, this Article shall authorize the Commission to establish 1 or more Commission marketing orders, as herein provided, in the region or parts thereof as defined in the order.

(b) A Compact over-order price established pursuant to this section shall apply only to Class I milk. Such over-order price shall not exceed $1.50 per gallon. Beginning in 1990, and using that year as a base, the foregoing $1.50 per gallon maximum shall be adjusted annually by the rate of change in the Consumer Price Index as reported by the Bureau of Labor Statistics of the United States Department of Labor. For purposes of the pooling and equalization of an over-order price, the value of milk used in other use classifications shall be calculated at the appropriate class price established pursuant to the applicable Federal order or State dairy regulation and the value of unregulated milk shall be calculated in relation to the nearest prevailing class price in accordance with and sub-

ject to such adjustments as the Commission may prescribe in regulations.

(c) A Commission marketing order shall apply to all classes and uses of milk.

(d) The Commission is hereby empowered to establish the minimum price for milk to be paid by pool plants, partially regulated plants, and all other handlers receiving milk from producers located in a regulated area. This price shall be established either as a Compact over-order price or by 1 or more Commission marketing orders. Whenever such a price has been established by either type of regulation, the legal obligation to pay such price shall be determined solely by the terms and purpose of the regulation without regard to the situs of the transfer of title, possession, or any other factors not related to the purposes of the regulation and this Compact. Producer-handlers as defined in an applicable Federal market order shall not be subject to a Compact over-order price. The Commission shall provide for similar treatment of producer-handlers under Commission marketing orders.

(e) In determining the price, the Commission shall consider the balance between production and consumption of milk and milk products in the regulated area, the costs of production including, but not limited to the price of feed, the cost of labor including the reasonable value of

the producer's own labor and management, machinery expense, and interest expense, the prevailing price for milk outside the regulated area, the purchasing power of the public and the price necessary to yield a reasonable return to the producer and distributor.

(f) When establishing a Compact over-order price, the Commission shall take such action as necessary and feasible to ensure that the over-order price does not create an incentive for producers to generate additional supplies of milk.

(g) The Commission shall whenever possible enter into agreements with State or Federal agencies for exchange of information or services for the purpose of reducing regulatory burden and cost of administering the Compact. The Commission may reimburse other agencies for the reasonable cost of providing these services.

§ 10. OPTIONAL PROVISIONS FOR PRICING ORDER

Regulations establishing a Compact over-order price or a Commission marketing order may contain, but shall not be limited to, any of the following:

(1) Provisions classifying milk in accordance with the form in which or purpose for which it is used, or creating a flat pricing program.

(2) With respect to a Commission marketing order only, provisions establishing or providing a method for establishing separate minimum prices for each use classification prescribed by the Commission, or a single minimum price for milk purchased from producers or associations of producers.

(3) With respect to an over-order minimum price, provisions establishing or providing a method for establishing such minimum price for Class I milk.

(4) Provisions for establishing either an over-order price or a Commission marketing order may make use of any reasonable method for establishing such price or prices including flat pricing and formula pricing. Provision may also be made for location adjustments, zone differentials, and for competitive credits with respect to regulated handlers who market outside the regulated area.

(5) Provisions for the payment to all producers and associations of producers delivering milk to all handlers of uniform prices for all milk so delivered, irrespective of the uses made of such milk by the individual handler to whom it is delivered, or for the payment of producers delivering milk to the same

handler of uniform prices for all milk delivered by them.

(A) With respect to regulations establishing a Compact over-order price, the Commission may establish 1 equalization pool within the regulated area for the sole purpose of equalizing returns to producers throughout the regulated area.

(B) With respect to any Commission marketing order, as defined in section 2, subdivision 9, which replaces 1 or more terminated Federal orders or State dairy regulation, the marketing area of now separate State or Federal orders shall not be merged without the affirmative consent of each State, voting through its delegation, which is partly or wholly included within any such new marketing area.

(6) Provisions requiring persons who bring Class I milk into the regulated area to make compensatory payments with respect to all such milk to the extent necessary to equalize the cost of milk purchased by handlers subject to a Compact over-order price or Commission marketing order. No such provisions shall discriminate against milk producers outside the regulated area. The provisions for com-

pensatory payments may require payment of the difference between the Class I price required to be paid for such milk in the State of production by a Federal milk marketing order or State dairy regulation and the Class I price established by the Compact over-order price or Commission marketing order.

(7) Provisions specially governing the pricing and pooling of milk handled by partially regulated plants.

(8) Provisions requiring that the account of any person regulated under a Compact over-order price shall be adjusted for any payments made to or received by such persons with respect to a producer settlement fund of any Federal or State milk marketing order or other State dairy regulation within the regulated area.

(9) Provisions requiring the payment by handlers of an assessment to cover the costs of the administration and enforcement of such order pursuant to Article VII, section 18(a).

(10) Provisions for reimbursement to participants of the Women, Infants and Children Special Supplemental Food Program of the United States Child Nutrition Act of 1966.

(11) Other provisions and requirements as the Commission may find are necessary or appropriate to effectuate the purposes of this Compact and to provide for the payment of fair and equitable minimum prices to producers.

ARTICLE V. RULEMAKING PROCEDURE

§ 11. RULEMAKING PROCEDURE

Before promulgation of any regulations establishing a Compact over-order price or Commission marketing order, including any provision with respect to milk supply under section 9(f), or amend thereof, as provided in Article IV, the Commission shall conduct an informal rulemaking proceeding to provide interested persons with an opportunity to present data and views. Such rulemaking proceeding shall be governed by section 4 of the Federal Administrative Procedure Act, as amended (5 U.S.C. 553). In addition, the Commission shall, to the extent practicable, publish notice of rulemaking proceedings in the official register of each participating State. Before the initial adoption of regulations establishing a Compact over-order price or a Commission marketing order and thereafter before any amendment with regard to prices or assessments, the Commission shall hold a public hearing. The Commission may commence a rulemaking proceeding on its own initiative or may in its sole discretion act upon

the petition of any person including individual milk producers, any organization of milk producers or handlers, general farm organizations, consumer or public interest groups, and local, State, or Federal officials.

§ 12. FINDINGS AND REFERENDUM

(a) In addition to the concise general statement of basis and purpose required by section 4(b) of the Federal Administrative Procedure Act, as amended (5 U.S.C. 553(c)), the Commission shall make findings of fact with respect to:

(1) Whether the public interest will be served by the establishment of minimum milk prices to dairy farmers under Article IV.

(2) What level of prices will assure that producers receive a price sufficient to cover their costs of production and will elicit an adequate supply of milk for the inhabitants of the regulated area and for manufacturing purposes.

(3) Whether the major provisions of the order, other than those fixing minimum milk prices, are in the public interest and are reasonably designed to achieve the purposes of the order.

(4) Whether the terms of the proposed regional order or amendment are approved by producers as provided in section 13.

§ 13. PRODUCER REFERENDUM

(a) For the purpose of ascertaining whether the issuance or amendment of regulations establishing a Compact over-order price or a Commission marketing order, including any provision with respect to milk supply under section 9(f), is approved by producers, the Commission shall conduct a referendum among producers. The referendum shall be held in a timely manner, as determined by regulation of the Commission. The terms and conditions of the proposed order or amendment shall be described by the Commission in the ballot used in the conduct of the referendum, but the nature, content, or extent of such description shall not be a basis for attacking the legality of the order or any action relating thereto.

(b) An order or amendment shall be deemed approved by producers if the Commission determines that it is approved by at least ⅔ of the voting producers who, during a representative period determined by the Commission, have been engaged in the production of milk the price of which would be regulated under the proposed order or amendment.

(c) For purposes of any referendum, the Commission shall consider the approval or disapproval by any cooperative association of producers, qualified under the provisions of the Act of Congress of February 18, 1922, as amended, known as the Capper-Volstead Act, bona fide

engaged in marketing milk, or in rendering services for or advancing the interests of producers of such commodity, as the approval or disapproval of the producers who are members or stockholders in, or under contract with, such cooperative association of producers, except as provided in paragraph (1) hereof and subject to the provisions of paragraphs (2) through (5) hereof.

(1) No cooperative which has been formed to act as a common marketing agency for both cooperatives and individual producers shall be qualified to block vote for either.

(2) Any cooperative which is qualified to block vote shall, before submitting its approval or disapproval in any referendum, give prior written notice to each of its members as to whether and how it intends to cast its vote. The notice shall be given in a timely manner as established, and in the form prescribed, by the Commission.

(3) Any producer may obtain a ballot from the Commission in order to register approval or disapproval of the proposed order.

(4) A producer who is a member of a cooperative which has provided notice of its intent to approve or not to approve a proposed order, and who obtains a ballot and with such ballot expresses his

approval or disapproval of the proposed order, shall notify the Commission as to the name of the cooperative of which he or she is a member, and the Commission shall remove such producer's name from the list certified by such cooperative with its corporate vote.

(5) In order to ensure that all milk producers are informed regarding a proposed order, the Commission shall notify all milk producers that an order is being considered and that each producer may register his approval or disapproval with the Commission either directly or through his or her cooperative.

§ 14. TERMINATION OF OVER-ORDER PRICE OR MARKETING ORDER

(a) The Commission shall terminate any regulations establishing an over-order price or Commission marketing order issued under this Article whenever it finds that such order or price obstructs or does not tend to effectuate the declared policy of this Compact.

(b) The Commission shall terminate any regulations establishing an over-order price or a Commission marketing order issued under this Article whenever it finds that such termination is favored by a majority of the producers who, during a representative period determined by the Commission, have been engaged in the production of milk

the price of which is regulated by such order; but such termination shall be effective only if announced on or before such date as may be specified in such marketing agreement or order.

(c) The termination or suspension of any order or provision thereof, shall not be considered an order within the meaning of this Article and shall require no hearing, but shall comply with the requirements for informal rulemaking prescribed by section 4 of the Federal Administrative Procedure Act, as amended (5 U.S.C. 553).

ARTICLE VI. ENFORCEMENT

§ 15. RECORDS, REPORTS, ACCESS TO PREMISES

(a) The Commission may by rule and regulation prescribe recordkeeping and reporting requirements for all regulated persons. For purposes of the administration and enforcement of this Compact, the Commission is authorized to examine the books and records of any regulated person relating to his or her milk business and for that purpose, the Commission's property designated officers, employees, or agents shall have full access during normal business hours to the premises and records of all regulated persons.

(b) Information furnished to or acquired by the Commission officers, employees, or its agents pursuant to this section shall be confidential and not subject to disclosure

except to the extent that the Commission deems disclosure to be necessary in any administrative or judicial proceeding involving the administration or enforcement of this Compact, an over-order price, a Compact marketing order, or other regulations of the Commission. The Commission may promulgate regulations further defining the confidentiality of information pursuant to this section. Nothing in this section shall be deemed to prohibit (1) the issuance of general statements based upon the reports of a number of handlers, which do not identify the information furnished by any person, or (2) the publication by direction of the Commission of the name of any person violating any regulation of the Commission, together with a statement of the particular provisions violated by such person.

(c) No officer, employee, or agent of the Commission shall intentionally disclose information, by inference or otherwise, which is made confidential pursuant to this section. Any person violating the provisions of this section shall upon conviction be subject to a fine of not more than $1,000 or to imprisonment for not more than 1 year, or both, and shall be removed from office. The Commission shall refer any allegation of a violation of this section to the appropriate State enforcement authority or United States Attorney.

§16. SUBPOENA, HEARINGS, AND JUDICIAL REVIEW

(a) The Commission is hereby authorized and empowered by its members and its properly designated officers to administer oaths and issue subpoenas throughout all signatory States to compel the attendance of witnesses and the giving of testimony and the production of other evidence.

(b) Any handler subject to an order may file a written petition with the Commission stating that any such order or any provision of any such order or any obligation imposed in connection therewith is not in accordance with law and praying for a modification thereof or to be exempted therefrom. He shall thereupon be given an opportunity for a hearing upon such petition, in accordance with regulations made by the Commission. After such hearing, the Commission shall make a ruling upon the prayer of such petition which shall be final, if in accordance with law.

(c) The district courts of the United States in any district in which such handler is an inhabitant, or has his principal place of business, are hereby vested with jurisdiction in equity to review such ruling, provided a bill in equity for that purpose is filed within 30 days from the date of the entry of such ruling. Service of process in such proceedings may be had upon the Commission by delivering

to it a copy of the bill of complaint. If the court determines that such ruling is not in accordance with law, it shall remand such proceedings to the Commission with directions either (1) to make such ruling as the court shall determine to be in accordance with law, or (2) to take such further proceedings as, in its opinion, the law requires. The pendency of proceedings instituted pursuant to this subdivision shall not impede, hinder, or delay the Commission from obtaining relief pursuant to section 17. Any proceedings brought pursuant to section 17 (except where brought by way of counterclaim in proceedings instituted pursuant to this section) shall abate whenever a final decree has been rendered in proceedings between the same parties, and covering the same subject matter, instituted pursuant to this section.

§17. ENFORCEMENT WITH RESPECT TO HANDLERS

(a) Any violation by a handler of the provisions of regulations establishing an over-order price or a Commission marketing order, or other regulations adopted pursuant to this Compact shall:

(1) Constitute a violation of the laws of each of the signatory States. Such violation shall render the violator subject to a civil penalty in an amount as may be prescribed by the laws of each of the partici-

pating States, recoverable in any State or Federal court of competent jurisdiction. Each day such violation continues shall constitute a separate violation.

(2) Constitute grounds for the revocation of license or permit to engage in the milk business under the applicable laws of the participating States.

(b) With respect to handlers, the Commission shall enforce the provisions of this Compact, regulations establishing an over-order price, a Commission marketing order or other regulations adopted hereunder by—

(1) commencing an action for legal or equitable relief brought in the name of the Commission in any State or Federal court of competent jurisdiction; or

(2) with the agreement of the appropriate State agency of a participating State, by referral to the State agency for enforcement by judicial or administrative remedy.

(c) With respect to handlers, the Commission may bring an action for injunction to enforce the provisions of this Compact or the order or regulations adopted thereunder without being compelled to allege or prove that an adequate remedy of law does not exist.

ARTICLE VII. FINANCE

§ 18. FINANCE OF START-UP AND REGULAR COSTS

(a) To provide for its start-up costs, the Commission may borrow money pursuant to its general power under section 6, subdivision (d), paragraph (4). In order to finance the costs of administration and enforcement of this Compact, including pay back of start-up costs, the Commission is hereby empowered to collect an assessment from each handler who purchases milk from producers within the region. If imposed, this assessment shall be collected on a monthly basis for up to 1 year from the date the Commission convenes, in an amount not to exceed one-tenth of 1 percent of the applicable Federal market order blend price per hundredweight of milk purchased from producers during the period of the assessment. The initial assessment may apply to the projected purchases of handlers for the 2-month period following the date the Commission convenes. In addition, if regulations establishing an over-order price or a Compact marketing order are adopted, they may include an assessment for the specific purpose of their administration. These regulations shall provide for establishment of a reserve for the Commission's ongoing operating expenses.

(b) The Commission shall not pledge the credit of any participating State or of the United States. Notes issued

by the Commission and all other financial obligations incurred by it, shall be its sole responsibility and no participating State or the United States shall be liable therefor.

§ 19. AUDIT AND ACCOUNTS

(a) The Commission shall keep accurate accounts of all receipts and disbursements, which shall be subject to the audit and accounting procedures established under its rules. In addition, all receipts and disbursements of funds handled by the Commission shall be audited yearly by a qualified public accountant and the report of the audit shall be included in and become part of the annual report of the Commission.

(b) The accounts of the Commission shall be open at any reasonable time for inspection by duly constituted officers of the participating States and by any persons authorized by the Commission.

(c) Nothing contained in this Article shall be construed to prevent Commission compliance with laws relating to audit or inspection of accounts by or on behalf of any participating State or of the United States.

ARTICLE VIII. ENTRY INTO FORCE;
ADDITIONAL MEMBERS AND WITHDRAWAL

§ 20. ENTRY INTO FORCE; ADDITIONAL MEMBERS

The Compact shall enter into force effective when enacted into law by any 3 States of the group of States com-

posed of Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, and Virginia, and when the consent of Congress has been obtained. This Compact shall also be open to States which are contiguous to any of the named States and open to States which are contiguous to participating States.

§ 21. WITHDRAWAL FROM COMPACT

Any participating State may withdraw from this Compact by enacting a statute repealing the same, but no such withdrawal shall take effect until 1 year after notice in writing of the withdrawal is given to the Commission and the Governors of all other participating States. No withdrawal shall affect any liability already incurred by or chargeable to a party State prior to the time of such withdrawal.

§ 22. SEVERABILITY

If any part or provision of this Compact is adjudged invalid by any court, such judgment shall be confined in its operation to the part or provision directly involved in the controversy in which such judgment shall have been rendered and shall not affect or impair the validity of the remainder of this Compact.

SEC. 2. RESERVATION OF RIGHTS.

(a) IN GENERAL.—The right to alter, amend, or repeal this Act is expressly reserved.

(b) COMPENSATION REQUIREMENT.—When an over-order price is in effect, the Commission established in the compact set out in section 1 shall compensate the Commodity Credit Corporation before the end of the fiscal year for the cost of any increased Commodity Credit Corporation dairy purchases which result from projected increased fluid milk production for that fiscal year within the Compact region in excess of the national average rate of increase.

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Mr. BRYANT. I believe that we will—with the indulgence of the persons assembled here, we have as well on our agenda today the markup of a private bill, and if at some point we have a quorum, a voting quorum, present, I will stop the hearing and go to the markup of the private bill and return to the hearing, which should not take but a few minutes.

Does any member wish to make an opening statement?

Mr. GEKAS. Yes, Mr. Chairman.

Mr. BRYANT. Mr. Gekas.

Mr. GEKAS. I thank the Chair.

We are, as the Chair has indicated, very interested in hearing more views on this important subject. I myself have been the recipient of briefs and arguments that rose to such a volume that I was not going to be prepared for a markup today or a final decision on this subject matter, and I wanted my colleagues who are on the panel to know that. So we are open to further discussion, open to your entreaties and your points of view between now and whenever markup shall occur.

With that, I yield back the balance of my nontime.

Mr. BRYANT. Very well.

At this time, we welcome to the witness table three of our colleagues. I would say in the event that staffers of other colleagues who were called to testify are present, initially, the assumption was that this was a regional matter that we could approve very quickly, and we encouraged Members not to take much time with testimony or not to be present, just to send their statements so that we could move quickly and mark the bill up. However, it has become more controversial.

We have three Members who are here today to speak. Others may wish to speak who called and originally were discouraged from being here, and for that I apologize. The circumstance, I think, has caused that.

[The prepared statement of Ms. Snowe follows:]

PREPARED STATEMENT OF HON. OLYMPIA J. SNOWE, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MAINE

Mr. Chairman, thank you for the opportunity to testify before the Subcommittee on Administrative Law and Governmental Relations in strong support of H.R. 4560. The issues discussed here today are very important to the people of Maine and New England. The legislation that you are considering, and which I have cosponsored, will help to define the kind of future that we will have in the region.

Maine is a rural state, and the 2nd Congressional District, which I represent, is the largest Congressional district east of the Mississippi River, indicating a very rural, sparsely populated region.

As in many other rural areas of the country, agriculture is a cornerstone of Maine's economy, and within the agricultural sector, dairy farming usually ranks second or third in cash receipts every year. The dairy industry provides not only jobs for the farmers themselves, but for the people who sell farm machinery, service the machinery, sell fuel and feed, and provide other goods and services. In many small towns, especially in Central Maine, dairy farms account for large shares of the municipal tax base, and thus play a critical role in funding local schools and essential town services.

Unfortunately, all is not well in the Maine dairy industry, as the statistics starkly illustrate. In 1978, Maine had 1133 dairy farms. By 1988, that number had declined to 800. In 1991, there were 680. This year, the number is down to 606. These are small family farms; their owners are well-known members of the local community. When they go, the fabric of society in rural Maine begins to unravel.

This precipitous decline in the number of dairy farms can be attributed to several factors, most notably by the fact that prices are low while costs are high; the same circumstances apply to farmers in other New England states. In Maine, the average cost of producing milk is $17 per 100 pounds, or hundred-weight (cwt.). The June 1994 federal order price in the Northeast was $16.23 per cwt. For August, the price is $14.49 per cwt. For the year 1993, the average milk price in the Northeast declined by 54 cents per cwt.

Over the last ten years or so, milk prices simply have not increased in concert with production. In 1981, the retail milk price in Maine was $2.20 a gallon. In 1994, the retail price is still $2.20 a gallon -- without adjusting for inflation.

Another problem pressuring the small dairy farmers in Maine and other New England states is the volatility of milk prices to the farmer. As I noted in an earlier example, the federal milk price in June was $16.23 per cwt, while the August price is $14.49, a drop of nearly $2 in price within two months. Last year, the difference between the highest and lowest federal milk

blend prices was $1.71. These price swings add serious uncertainty to a farmer's daily existence, and in turn make it difficult for that farmer to plan strategically or to raise capital when needed.

After watching more farmers go out of business year after year, the State of Maine decided to actively address this problem. It established a state vendor's fee to stabilize the price that farmers receive for their milk. The fee moves on a sliding scale, depending on the price of milk. For instance, when the federal order price is $14, the vendor's fee provides 24 cents a gallon to the farmer; as the price rises to $16 cwt. or higher, the fee slides down to 4 cents a gallon. The vendor's fee phases out completely when the price exceeds $16.50 cwt. Thus, this modest policy instrument does not even guarantee Maine's dairy farmers the average production cost of $17, but it does help to soften the blow of low prices, and it eliminates price volatility.

Despite its modesty, however, the Maine vendor's fee is threatened with extinction. In the recent case of Massachusetts v. West Lynn Creamery, the U.S Supreme Court ruled that a Massachusetts program to guarantee a producer price to dairy farmers unduly infringed on interstate commerce because it relied on a tax imposed on milk imported into Massachusetts to fund the program. It determined that the tax discriminates against milk produced outside of Massachusetts. In Maine, all vendors that sell milk within state boundaries, whether they are headquartered in Maine or any other state, must pay the vendor's fee. There is no discrimination. But the language in the West Lynn Creamery decision is so broad that Maine's vendor's fee could be jeopardized as well; and indeed, an out-of-state vendor has filed suit against the State of Maine, and the case is pending.

The story for dairy farmers in other New England states parallels Maine's: high production costs, stagnant prices, price volatility, and struggles to stay in business. If we in New England are going to save a way of life, and the public amenities that go with it like open space preservation, something must be done to address the serious problems facing the dairy farmers. But the solution must be equitable. It must protect the interests of consumers as well as farmers. The Northeast Interstate Dairy Compact does just that. It balances the interests of farmers and the rural economy, with the interests of consumers and more urbanized communities.

The Compact has been approved by all of the New England states -- the two milk-exporting states of Maine and Vermont, as well as the four importing states of Massachusetts, New Hampshire, Rhode Island, and Connecticut. The fact that these producer and consumer states have agreed on the Compact and strongly support it is a testament to the Compact's inherent fairness in balancing the needs of both consumers and producers.

Specifically, the Compact creates a Commission which has the authority to set minimum prices paid to farmers for fluid, or Class I, milk. The voting members of the Commission are delegations from each participating state. The state delegations can consist of 3 to 5 persons, but at least one delegate from each state must be a dairy farmer currently engaged in the practice of dairy farming, and at least one must be a consumer's representative. Each delegation has one vote on the Commission, and a two-thirds majority vote is required to either establish or terminate a minimum milk price. The minimum price, or "over-order" price, is the price that milk processing plants must pay to farmers for fluid milk. "Over-order" refers to the differential between the federal order price and the higher price set by the commission.

Consumer interests are well-represented in the Compact. In addition to requiring that consumer representatives be included in each state delegation, the Compact explicitly caps the amount at which the Commission can set the minimum price at $1.50 per gallon over the federal order price. The two-thirds majority requirement ensures that at least two consumer states must agree to any proposed minimum price since consumer states account for four of the six participating states. And the Compact contains an escape clause that allows any state to exempt itself from a minimum price regulation, even if all of the other states agree to it.

The Compact also addresses concerns raised by dairy farmers in other parts of the country that an increased minimum price for farmers in New England could provide an incentive to our farmers to generate additional supplies of milk, placing downward pressure on the price of milk nationwide. It states explicitly that when establishing a minimum price, the Commission must take such action as necessary and feasible to ensure that the regulation does not create an incentive to surplus production. To further strengthen this provision, the cosponsors of H.R. 4560 have agreed to support an amendment passed by the Senate Agriculture Committee to the Senate version of the bill, S. 2069, which requires the Commission to develop and implement a specific plan to ensure that an increased minimum price does not create an incentive for producers to generate additional supplies of milk.

Mr. Chairman, the Northeast Interstate Dairy Compact is not a panacea. It will not solve all of the problems facing dairy farmers in New England. But it will make a positive contribution by providing all states of the region with the ability, if they so choose, to set a price for milk that more accurately reflects the costs of production in our region of the country, and to do so in manner that protects consumer interests. It will eliminate the debilitating volatility of milk prices. And it achieves these objectives without violating the interstate commerce clause of the Constitution.

I urge the subcommittee's support for H.R. 4560.

Mr. BRYANT. We welcome Bernie Sanders from Vermont, John Olver from Massachusetts and Nancy Johnson from Connecticut. Maybe we will go from left to right here and ask each of you to proceed with your testimony.

Congressman Sanders.

STATEMENT OF HON. BERNARD SANDERS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF VERMONT

Mr. SANDERS. Thank you very much, Mr. Chairman, and I really want to thank you for your efforts and your holding this hearing today on the Northeast Dairy Compact. The fact is its passage is of the utmost importance to the dairy farmers of Vermont as well as to our consumers.

Over the last few decades, we have witnessed the loss of thousands and thousands of family dairy farms in New England and across the Nation. The reason for the decline in family agriculture is not complicated. Everybody knows the reason. The price that farmers receive for their milk is not consistently adequate to cover their costs. This is true despite significant improvements in farm efficiency and in milk production per cow.

In fact, if the price farmers receive for milk had kept pace with inflation over the last decade, that price would be twice the approximately $12 per hundred weight farmers are receiving today. In other words, in terms of real income, you can argue that in the last 15 or 20 years the income that family farmers in Vermont have received has declined by 50 percent, and that is the explanation why thousands of them have to leave the farms.

There have been attempts to develop a national solution to this crisis, but because of disagreements between farmers and processors and regional differences, a national response has not been possible. The result has been an overall significant decline in the price the dairy farmers receive for their product as well as major price instability.

Unfortunately, while farmers have been severely hurt by low prices, consumers have not benefited, and I think that is an important point to know. Farmers are receiving less and less in real income, but when you go to the grocery store the price you are paying for your milk product has not gone down.

When milk prices to farmers plummeted by some 30 percent during the 1980's, the consumer price remained constant and in some cases even went up—the farmers' prices going down, the prices at the grocery store going up. Obviously, those in the marketing chain between farmers and consumers reaped large profits.

That is why some large processors are opposed to this proposal. They want cheap milk. They could care less if the rural economies of Vermont or Massachusetts or Wisconsin or Texas fall apart.

Mr. Chairman, the Northeast Dairy Compact represents an innovative regional solution to a serious problem. It will provide the New England States with a tool that might provide a higher price for farmers and greater price stability. It will also bring together consumers and farmers. In my view, these two groups are natural allies who for too long have been divided by dairy industry forces who profit when farm prices go down and consumer prices go up.

Mr. Chairman, this compact has been approved, and this is an important point to make. Very often in this institution we talk about local controls, States, regions. This compact has been approved by the legislatures and Governors in each of the New England States—Democrats, Republicans, independent, so forth—and has bipartisan support in the Congress. I would ask that this subcommittee give its approval for the Northeast Dairy Compact.

Thank you, Mr. Chairman.

Mr. BRYANT. Mr. Olver.

STATEMENT OF HON. JOHN W. OLVER, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MASSACHUSETTS

Mr. OLVER. Thank you, Mr. Chairman.

I, first, want to thank you and the members of the committee for holding this hearing in a timely manner. I recognize the workload that you have as we head toward recess, and I appreciate your consideration of the legislation.

This legislation provides for an interstate compact in its purest sense. The commerce clause provides for these arrangements. The State legislatures of the States involved must approve the arrangement, and all six New England States have passed this legislation. So the six New England States are coming to the Congress for its approval.

This compact allows our six States to seek a regional solution to a shared problem of a failing dairy industry. And the industry really is failing. In the past 10 years, the region has lost 2,500 dairy farms, 8,500 jobs. In the years that I have been in the public sector, we have lost in Massachusetts two-thirds of all of our dairy farms and that is a very significant problem for us.

Right now, New England dairy farmers are receiving the same price that they received in 1980, and their costs have gone up. As a result of that, farms are being abandoned on a virtually daily basis.

This compact does not have any effect on the rest of the country, nor does it change any existing agricultural laws. The compact simply allows our region to get together and decide whether to institute an over-order price on fluid drinking milk and fluid drinking milk alone. Nothing else is affected but the fluid drinking milk. The legislation does not spell out what the over-order price should be.

The region must decide whether such a price is needed to stabilize the industry and how much it should be. And any over-order money would be pooled and distributed to every dairy farmer who sells fluid drinking milk in the New England market. The legislation does not change any Federal dairy law or policy, and I want to bring to your attention that the compact has no cost whatsoever to the Federal Government.

There have been and will be attempts to show that this compact would somehow replace the existing Federal milk marketing order system, which is not true, and, also, to show that farmers outside of the compact are going to be affected, which I believe is also not true.

However, there have been some genuine concerns about the compact, most of which were addressed by the Senate Judiciary Com-

mittee when it approved the legislation in June. The committee approved—the Senate committee approved four changes, all of which I fully support and respectfully urge you, Mr. Chairman, and the members of the committee to add to the legislation during markup.

Mr. Chairman, this compact is a result of 6 years of bipartisan negotiations and discussions in New England. Farmers, processors, retailers, consumers and legislators hammered out this agreement which was passed almost unanimously by each of the six legislatures.

New England is now coming to Congress to have that mutual agreement—our mutual agreement approved. The bill is cosponsored by 21 of the 23 New England Members of the House and is supported by all of the New England Senators. I hope that the committee can support our region and help us preserve the New England dairy industry.

Mr. BRYANT. Thank you.

Ms. Johnson.

STATEMENT OF HON. NANCY L. JOHNSON, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CONNECTICUT

Mrs. JOHNSON. I support the comments of my colleagues and won't repeat them. I do think the fact that this has been through every legislature in New England matters. All of the consumer issues have been tried in that court.

I just want to make two additional comments.

First of all, the local processors do support this, even though the national processors, apparently, don't.

Second, the Federal marketing order system of setting milk prices traditionally allowed States to adjust those prices, and, traditionally, Connecticut set a higher price because we have higher costs in Connecticut. We have much higher energy costs and so on and so forth.

As the milk markets became regional, that ability of States to address the needs of their own industry was eliminated by our interstate commerce clause. So we used to be able to think through for ourselves dairy prices to a much larger degree than we are now.

New England dairy prices are pinned to the Midwest market, but the cost of living is very much lower in the Midwest. The whole structure is different. If you take the average cost of homes, energy prices, and health care costs, they are just very different. So the costs our farmers face are very much higher, and we simply cannot survive without some regional ability to set reasonable prices for this product.

As John pointed out, our prices now are about what we were getting 15 years ago, but everything else has gone up staggeringly. The only farms that are still working in my district are the farms where the family owned the land so they have no carrying costs. But because those farms have had to buy much more sophisticated equipment—I mean, you can't dairy now without a lot of computer capability and sophisticated feed management capability and so on and so forth—they are going into debt. Deferred maintenance is becoming a real problem.

These are not businesses that can keep going unless we give them the ability to look at costs regionally, which is perfectly fair in a market economy.

I would also remind you that costs are artificially influenced by Federal policy in other markets. There are parts of the country where Federal power authorities make available to farmers far lower energy costs. There are parts of the country where Federal policies have reduced the costs of water in a way that is not true in New England.

So Federal policy already creates an unlevel playing field in terms of competition in the milk industry, and all we are saying is within our region, for our own people, give us a little latitude in balancing consumer interests in having a regional food supply in fluid milk, which we will not have if we do not do this.

We are just saying Federal policies don't always create a level playing field. Give us the latitude we have had most of the life of this Nation to address the needs of this regional market to preserve regional milk producing capability which we think is critical. And that is what this is all about, and we ask for your support and backing.

And I support, as does John, the Senate changes, and we will be happy to work through with you the controversies that have come to surround this bill, which I think for the most part are not directly related to the problems in New England.

Mr. BRYANT. Well, thank you very much.

The Chair recognizes himself for 5 minutes for questions.

Let me ask any of you a question. If I check the same statistics, say, for my State of Texas or for any other part of the country with regard to the decline in the number of dairy farms and all of that, what will I find? Will I find the same thing in my region that you have in yours? I don't know the answer to that. That is not a rhetorical question. Does anyone know?

Mr. OLVER. I think you might find it in kind but not in degree. The degree in New England is worse, because of a variety of reasons. Particularly, the urbanized state of the southern part of New England. As I had indicated, at least two-thirds of all of the dairy farms in my State have gone out of business within a matter of about 20 years. It is just a good deal more severe in those kinds of cases, because the costs, as Nancy has indicated, are significantly greater in some areas that you can clearly demonstrate. So I think in kind you may find similarities but by no means in degree.

Mr. BRYANT. Second, you mentioned—go ahead.

Mrs. JOHNSON. I would just say the evidence of that is that it was the New England States that piloted the farmland preservation bills and were first to realize that if we didn't begin to buy up some of this land, the development pressure was so great, and land values had skyrocketed so irrationally that we wouldn't be able to preserve the industry.

So we have for a long time at great taxpayer expense because of taxpayer concern developed a number of programs to assure the future of this industry. And I think you see that more in New England because the cost structure in New England has been far higher now for a number of years.

Mr. SANDERS. I think you would see in Texas and all over this country is not only family dairy farmers but family farms of all kind are declining rapidly, and I think it is a real tragedy for rural America. What you are seeing here today, as Nancy indicated, is an effort on the part of the entire region—six legislatures, six Governors, a lot of different political views, almost unanimously, every New England Senator, 21 out of 23 Members of the House, very different political views represented right here coming together and saying that the loss of the family farm and the dairy farm is a real tragedy for rural America.

It is bad for consumers, and it is bad for the environment. It is bad for the way of life the people have practiced for 200 years. I think we have innovatively come together to bring forth a solution that makes sense to us.

Mr. BRYANT. Very well.

One last thing. This relates only to the sale of fluid milk; is that correct?

Mr. OLVER. That is correct.

Mr. BRYANT. I saw something, if someone buys the fluid milk in order to make another dairy product, the price mechanism doesn't operate?

Mrs. JOHNSON. True.

Mr. BRYANT. Mr. Gekas.

Mr. GEKAS. Yes. I thank the Chair.

Bernie said in his opening statement that there were instances in the history of your area that the farm price went down and the consumer price went up. The object of this legislation in your view, in the panel's view, is to try to raise to a better level the price forthcoming to farmers; isn't that correct?

The question that accompanies that then is, what happens to the consumer price? Isn't it—aren't you, by trying to guarantee—which is a wonderful object—the higher price for the farmer, implicitly bringing in higher price to the consumer?

Mr. OLVER. It may do so, but that is not a necessary end result of the compact operation. The compact, in order to reach an agreement as to what they believe, looking at all six States and—the compact has consumer and producer representatives in the compact, so that they have to reach a common agreement among those States and among those different interests in a process of hearings that would be held.

They may, in fact, find out something about the pricing system that goes on where, as my colleague from Vermont has already indicated, there have been substantial increases in the pricing while no increase in the amount that the farmer gets himself at the farm. And those price changes have been very substantial, sometimes without apparent good reason.

So there is a substantial reason to think that that process of determining whether an over-order price should be adopted would also show areas within the pricing system, in the middle market, essentially, ways in which that can be accommodated without any increase at the store.

Now, if indeed it does increase at the store, remember, it will have been approved by the consumer representatives of all of those New England States operating within that compact. So it is a rec-

ognition that in order to gain the values of jobs, the family farms, the open space, the fresh fluid milk locally produced and such, that there is a willingness, if it cannot be accommodated as I have described, to have a price increase in order to accommodate the increase needed to keep the dairy farms—the local dairy farms in business.

Mr. GEKAS. The consumer component of that process that you are talking about does not have a veto power, does it, just a vote or a voice; is that correct?

Mr. OLVER. Well, I am not perhaps an expert in the operations of the compact. Each one of the States has a vote. Each one of the States has a maximum of five representatives on the compact which must have both consumers and producers as members of the compact. The States which are the consumer States presumably, in creating the compact, will have majority consumer representation, so they will have the position there of determining what the vote for that particular State is.

Mr. GEKAS. But the point is——

Mrs. JOHNSON. It is also true that any State can pull out if they think that the compact has made a decision to raise prices in a way that they think is wrong. They can pull out and not participate. And then come back in later on when they want to. That kind of flexibility of structure reflects the commitment to consensus. This will be a consensus process, and if all the States don't agree, it won't happen.

Mr. GEKAS. But the consensus is going to have to require, when the price goes up to the farmer—correct me if I'm wrong—a yielding, either by the consumer element or the processor element or other middlemen——

Mrs. JOHNSON. Certainly. That is a fair statement, I think. If the price doesn't go up, it will be because there was enough profit at some other point between the farmer and the consumer to absorb the increase. It all depends on the amount——

It is like anything that we do. If we impose an increase in gasoline tax, sometimes it comes out of the pump and sometimes it doesn't, because it comes out of somebody's profit along the way.

Mr. GEKAS. Well, the consumer isn't included in what you are determining as the profit area. The consumer is a different element.

Mrs. JOHNSON. Correct.

Mr. GEKAS. So the profit, which will shrink to give the farmer higher price, has to come from so-called middlemen; is that correct? The ones that lie between the farmer——

Mrs. JOHNSON. It will come either from someone in the course, from the middlemen, processors and distributors and store owners or from the consumer or shared amongst them all. I mean, that is the tough decision that the compact folks have to make. But we are maintaining that they will be making it as representatives of States that have voted overwhelmingly in support of giving this region that power and recognizing that it might increase prices. Because the value to us of regionally produced fluid milk is sufficiently great to warrant that risk.

Mr. SANDERS. If I can just rephrase what Nancy said in another way. You have six States and you are going to have representatives appointed by the legislature and the Governor and so forth. There

are far more consumers in each of the States than there are family farmers. It will not be to the best interests of any of the States, the Governors or the legislatures, to create a situation where consumers are saying, the price is skyrocketing. And there are more than enough checks and balances within that process to make sure that the consumer prices remain at a reasonable point.

You raised the question though, and it is a fair question: OK, if farmers get more for their milk, somebody along the line is going to get less, right? Is that the point you are making?

I think the only point that we would make is—two points.

No. 1, in the last 15 years the real prices that farmers have received have gone down significantly. We as a region determined that the loss of family farms and those low prices are not in the best economic or social position for our States, OK? I think that we can—by coming together and looking at the fact that while consumers' prices have gone up and family farm prices have gone down, we can create a situation where the processors do OK, but we do preserve the family farms.

Mr. GEKAS. One other concomitant question. If Pennsylvania were to attempt to try to penetrate New England—New England markets for cheese, this wouldn't be affected, is that correct?

Mr. SANDERS. In no way.

Mr. GEKAS. If Pennsylvania dairy farmers ever wanted to set up some market mechanism to do business in New England, would they be met by a barrier around New England of any type?

Mr. OLVER. It is my understanding that the amendments adopted by the Senate specifically addressed that. So that if a particular co-op in northeastern Pennsylvania, where I was brought up, decided for some set of reasons to be involved there, that group of farmers, dairy farmers selling fluid milk into the New England market would benefit from it, would get the exact same benefits that those in New England provide.

Mr. SANDERS. George, you are not hearing from family farmers in Pennsylvania who are in opposition to this, are you?

Mr. GEKAS. Pardon me?

Mr. SANDERS. You are not hearing from family farmers in Pennsylvania in opposition to this, are you?

Mr. GEKAS. We are in touch with the Pennsylvania Farmers Association, and we are in the process, as I said in my opening statement, of garnering their positions on this. And I am trying to amplify in advance the thought process that you are implying in your advocacy here. I have——

Mr. OLVER. Let me just repeat then that the amendments adopted by the Senate as it passed through the judiciary committee there, the compact legislation, in June, specifically addressed the last issue that you raised. So that a group of farmers or a cooperative or whatever that would sell fluid milk for that market in New England, since we don't produce enough for the whole of the New England, it is almost a closed circuit, but not quite. It does draw in milk mostly at the moment totally from eastern New York State, as far as we can tell, that they would get that, and any benefit that would come to the environment is in that area.

Mr. GEKAS. But they couldn't market at a lower price than what would be established by the compact; is that correct?

Mr. OLVER. That is correct, as I understand it.

Mr. GEKAS. And so for the northeast Pennsylvania farmer, there would be an additional expense to go to New England, and, thereby, it would make it unprofitable for the northeast farmer to do so. Therefore, it would act as a barrier.

Mr. OLVER. Of course, at the moment the barrier is absolutely complete. Because what it is, in fact, opening is a possibility of their making that market through the compact because the price might be higher if the compact chooses to do so. At the moment, the barrier is there for exactly the reason—because the prices are so low they can't possibly get into it in any profitable way.

Mr. GEKAS. I think I know more about it now. I yield back.

Mr. OLVER. Probably more than you ever wanted to.

Mr. GEKAS. I yield back the balance of my time.

Mr. BRYANT. We welcome to the committee a Member of our full committee, Congressman Reed of Rhode Island. We are pleased to recognize you at this time for a statement or questions.

Mr. REED. Thank you, Mr. Chairman, for your hospitality today.

I would like to join my colleagues, Mr. Olver, Mr. Sanders, and Mrs. Johnson in support of this legislation. I have a written statement that I would ask be put into the record. I would just reemphasize some points that they made very well.

First, we are talking about ratifying legislation which has already been enacted by all of the New England States with virtually little, if any, controversy. It has been enacted with a great deal of sensitivity to interests to the point of view of consumers, and our role simply is to, essentially, bless what the States have already done.

Second, I believe—and it has been well stated by my colleagues—that this is not just an issue of pricing arrangements for fluid milk. This is the sensible way to maintain the quality and the lifestyle in many of our communities in terms of agricultural properties, in terms of farming.

I visited the few remaining dairy farms in Rhode Island, and their preservation is not only important to the individual farmers, it is very important to the communities. Because without these farms in operation we will see more tract housing and more developments in communities that are already burdened by these types of developments. So this is very critical to maintain the dwindling rural character of many parts of New England. This is true not only in the north, in Vermont and New Hampshire, but even in southern New England, which has much less of that rural character to preserve.

So I would urge favorable consideration of the legislation, and I thank my colleagues for their statements today. And I yield back my time.

Mr. BRYANT. Thank you.

[The prepared statement of Mr. Reed follows:]

Statement of the Honorable Jack Reed
H.R. 4560

before the Subcommittee on Administrative Law and Government Relations
August 3, 1994

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Mr. Chairman, I would like to thank you for holding this hearing. I am pleased to join my colleagues from across New England in supporting H.R. 4560, legislation to establish the Northeast Interstate Dairy Compact. This bill is critical to the survival of the dairy industry in New England and to the livelihood of the men and women who are working dawn to dusk trying desperately to save their farms and the rural heritage of the region.

The establishment of the Northeast Dairy Compact would represent a unique federal, state, and interstate partnership that has been approved overwhelmingly by every New England state legislature. One of the primary reasons for this legislation's overwhelming support on the state level is its consumer safeguards. Under the bill, a commission would be established to administer the Compact that would be comprised of a delegation from each state that must include at least one consumer representative. In addition, when establishing a new pricing regulation, the Compact Commission is required to consider testimony regarding the consumer ability to pay. Furthermore, the Compact would grant any state specific authority to exempt itself from any action taken by the commission.

I am confident that together, these provisions will help ensure that any price change recommended by the commission will strike a careful balance between the needs of dairy farmers and those of consumers.

Another reason why consumer states like Rhode Island support this bill is the stability that the Compact will bring to the dairy industry in the region. By preventing frequent fluctuations in dairy product prices the Compact will eliminate price swings have played havoc with producers seeking to preserve their livelihood and with consumers trying to make the most of their hard earned dollars at the supermarket.

Over the past decade, approximately 65 percent of the dairy farms in Rhode Island have shut down. This attrition rate threatens not only the supply of locally produced dairy goods, but also the rural character that contributes so much to the

quality of life in New England. H.R. 4560 aims to address this serious problem. It is an honest attempt to forge a fair and participatory system of pricing dairy products and I urge the Subcommittee to approve this legislation.

Mr. BRYANT. Mr. Goodlatte.

Mr. GOODLATTE. Thank you, Mr. Chairman.

Mr. Chairman, I serve on the Dairy Subcommittee of the House Agriculture Committee and never dreamed that I was going to face a complex dairy issue here in the Judiciary Committee. But it definitely adds a new——

Mr. GEKAS. Maybe you will join us in referring it to the Agriculture Committee.

Mr. GOODLATTE. I would, actually. But it definitely makes for a new set of variables here. We have everybody staked out on the Agriculture Committee.

I am not sure about this, but I wanted to ask: You mentioned, Mr. Olver, about the provisions in the Senate bill that relate to States surrounding New England or I guess to the south of New England, exporting in New England. Does this compact allow these States to regulate volume as well as price?

Mr. OLVER. The additional States?

Mr. GOODLATTE. No. Can the members of this compact restrict the amount of milk coming into the States from other States?

Mr. OLVER. Not that I am aware of. I think there may be others here who will testify to that question, but not that I am aware of.

Mr. GOODLATTE. All right. I guess I am curious how this will keep—it seems to me if you are requiring a higher price for milk in New England it is going to attract milk from other States coming in there, unless you have a mechanism to restrict that. And, if you do, I am concerned, because I know that some of the dairies in my State sell to the north, and I would be concerned about their ability to make those sales.

In other words, if you offer a higher price for milk in New England than is being obtained by producers elsewhere, why wouldn't producers elsewhere want to sell milk in New England as well and cause greater competition for your farmers, unless you have a mechanism to keep that milk out?

Mrs. JOHNSON. I think the compact mechanism would certainly be sensitive to the development of an excess in volume and then would want to lower prices in recognition of that volume.

What we are really saying to you is that, instead of doing this from Washington, we need to do this in the region so that we can, at the regional level, weigh those issues.

And, for us, the national marketing order system has been blind to the unusually high costs in New England, and over time, throughout our history, a structure has grown up that actually subsidizes farm costs in other areas of the country, so we are doubly disadvantaged. The current marketing order system does not take into account our higher costs, plus we don't benefit from any of the national subsidy programs that lower farm production costs in other parts of the country. So we are just saying we know we can't change it here.

Frankly, we can change it here. Just give us a Federal system with the kind of latitude we need to assure the continued existence of a fluid milk producing capability.

So I understand that it is not simple, but I think it is worth a try. And if we don't do this, there will be literally no regional capability and we will be totally dependent on outside milk, with the

transportation costs that go with it. And not only will milk prices go up then in New England but all over the country. Since they don't need to go up in the southern part of the country, necessarily, that isn't in the consumers' interest on the nationwide level.

It is just that the Federal marketing order system isn't sufficiently responsive and hasn't been able to be responsive in a way that maintains the industry in Connecticut to the same level it maintains it in Wisconsin and in other parts of the Nation, and that is why we are here.

Mr. OLVER. I think if I may now come back in—and after thinking about your question I think you have to consider what the circumstances are now versus what they would be in the future.

As of right now, milk does not come in from those—from any places outside just the very near eastern New York with the price order situation as it is. So there is no incentive at all for milk from your State, for instance, to make that kind of a trip. It is not profitable to do so. And so, therefore, in a market way it does not happen.

If this compact is approved and is allowed to function, in order—and, at the same time, corollary to that, our farms are going out of business, one right after the other——

Mr. GOODLATTE. How many farms are—dairy farms are there in New England now?

Mr. OLVER. As of right now, there are just a little over 3,000.

Mr. GOODLATTE. Do you know what the average size of the herd is?

Mr. OLVER. Oh, I am told it is around 120 milking heads. I think that is about right, plus or minus somewhat. I don't have these numbers right in front of me, but that is my recollection. In any case, at the moment we are losing them one right after the other and have been for some period of time.

So that if this compact, which is the six States getting together with the consumers and the producers and the processors of those six States, recognizing what is happening there, to try to deal with the situation for the six States, ends up setting an overorder price that they think is sustainable within the consumer and the producer markets there, if that ends up being an incentive that is provided for and allowed for for your farmers now perhaps to actually sell in there—though I don't think that there would be enough in that to lead to anything from a long distance—maybe from Pennsylvania, maybe from a little deeper into New York State to do that. But that is provided for in the compact and at least with the amendments that have been adopted on the Senate side.

And so all it can do is be a benefit for people in your places, in the case of the fluid milk pricing situation. And if, as Ms. Johnson indicates, that ends up causing something that was unforeseen, then the compact reacts to that. It is a reaction.

Mr. GOODLATTE. Let me yield to the chairman.

Mr. OLVER. It in no case can be worse than the situation that it presently is in, either for you or for us.

Mr. BRYANT. I just want to observe I think the specific answer to the question you asked is, something that is worrying me a little bit, is that the compact has the power to impose what, in effect, would be a tariff on milk coming out of Virginia or Texas if they

want to come up and sell in the compact region in order to prevent exactly what you said from happening.

If you have a high price there and my producer wants to come up and sell to take advantage of the high price, what you are going to do is make my guy—how does it work? My guy is going to have to pay some type of a penalty to come in there, isn't that right?

Mr. OLVER. I know of no provision that would do that.

Mr. SANDERS. On the contrary, my understanding—somebody can correct me if I am wrong—but your farmer is going to get—if he can break into the market, he is going to get a higher price.

Mr. OLVER. The same price that the farmer in New England or those in eastern New York would get who presently sell in the market.

Mr. BRYANT. You can't come in there and sell at a lower price, though?

Mr. OLVER. That is right.

Mr. BRYANT. My farmer can't come in there and sell just below the price being—the milk that is being sold by your farmer. Even though it is a higher price than he could get back in Texas, he can't do that, can he?

Mr. GOODLATTE. That is the whole purpose of this compact, as I understand it.

Mr. SANDERS. That is right. What we are saying is, if you—six New England States, six Governors have made a determination that they think is, as Jack indicated, for a whole lot of reasons, economic, social, that it is important to preserve the family farm. The family farm cannot be preserved unless farmers get a fair price, what we consider to be a fair price for their milk. If, in fact, the price is driven down, it is now $12, people can't survive on that. If we continue that trend, we are not going to have family farms.

Mr. GOODLATTE. Mr. Sanders, I wonder if you would comment on the implications of repeating this in other parts of the country or in other industries.

Mr. SANDERS. OK. That is a good question. I won't get into other industries. I don't know the implications.

But in terms—I believe that if you go back to your family farm, John, I think if you asked your family farmers in Texas how they feel about it, I would be surprised if they didn't say, let New England do it. We are in trouble back in Texas. We are in trouble all over America. And if regions can come together to provide a decent price for family farmers, support it by their State legislatures and their Governors, we might want that model as well.

So I kind of think that what we are proposing in New England may, in fact, become a model for other regions in the country which will be a good thing.

Mrs. JOHNSON. Congressman Goodlatte, basically, the Federal marketing system now is a system of regional price setting. And, in fact, California has some advantages that none of the rest of us do. So there are problems in the regional price-setting system now. We are saying, since Congress is not really fixing that, let us do this so we can at least preserve the ability to produce fluid milk in New England in the near term.

In talking with some of my colleagues on the Agriculture Committee, they point out to me about other problems in their areas

with the marketing order. We have not been able to get Congress to look at the problem in the marketing order.

I have been here 12 years. When I first came we started with that. So we are just saying, leave the marketing order system in place. Give us the ability—because, in a federalist system, this seems like a perfectly reasonable ability, since all the legislatures have voted on it. Let us try to reconcile consumer and producer interests and let us try to deal with how much are we willing to pay to have a fluid milk capability.

So I appreciate the seriousness of the issues that you are raising, and the Agriculture Committee has really not been able to deal with this, and we are just going around that now to say we, at least to survive, have to have this regional capability.

Incidentally, Massachusetts recently raised the price of milk, because States can still do this, but then you get into collusion if all of the States in New England do the same thing. So you know you are going to get raised prices. It is a question of what kind of market are you going to get? Are you going to get an integrated market, a modern market, a survivable market? Or you are going to get real chaos? Because the Federal marketing order system is simply failing us.

Mr. GOODLATTE. Well, I agree with you that we have a Byzantine pricing system for milk in this country right now. No question about that whatsoever.

But I am not sure that—and I am not saying that I am in opposition to your legislation. I have been studying it carefully. I appreciate your concerns about your farmers. But I am concerned about adding another layer to that and essentially balkanizing the economy of the country by creating these kind of compacts which I think may very well catch on all over the country and in all—and in other industries besides the dairy industry.

So I have some concerns along those lines that I think we need to address before we go into changing what has been a—you know, one of the first constitutional principles that we fought for in this country was the fact that we didn't want to set up the ability of States to impose tariffs and so on on milk coming in from other areas. And—or any product, for that matter.

Mr. REED. Would the gentleman yield for a moment?

Mr. GOODLATTE. Sure.

Mr. REED. I would like to respond to the chairman's question. As I understand the legislation, it would create a floor for milk prices, but the actual price would still be affected by supply and demand. And there would be opportunities for any farmer in any region to come in there based on supply and demand and sell the milk, but they couldn't go below that floor.

Mr. GOODLATTE. But that is a very strong interference with the free market system, and it not only affects consumers in New England but it also affects other factors.

Mr. REED. If I may just one more moment follow up: in some respects our fear—and I think my fear is shared by my colleagues—is that we could see ourselves in the same situation as we lose these agricultural dairy farms that we see ourselves with respect to the energy in our area, where we are at a tremendous disadvan-

tage in New England because we do not locally produce significant amounts of energy.

Our energy costs are far above every other region in the country, and, in fact, we import energy. We get it from Canada. We get it from every place else around the world. And we see ourselves at a tremendous disadvantage. We can't force other producers of energy around the country to lower their prices by fiat, and if we see the continued deterioration of our agricultural base going the way our energy base went, then I think we would be in this situation where we would have the—we would be at a tremendous disadvantage.

That is part of the logic of this legislation, is to give us the opportunity to still produce locally a product which is necessary to our people.

Mr. GOODLATTE. Reclaiming my time.

Mr. REED. Yes. Thank you very much.

Mr. GOODLATTE. I recognize that you have those variables that are definitely a hindrance to your industry, but that is true in any business in any part of the country. They all face different variables, and they would always like to have something that would give them the ability to alter that.

The question here is whether we go to the principle of allowing States in a particular region of the country to effectively manage their economy to the exclusion of the other States in the union, and that is, I think, the bottom line of what we have to decide.

Can I ask one more question? Are you a net producer—do you produce more milk than you consume in New England, or is it the other way?

Mr. SANDERS. Well, Vermont certainly consumes a lot more milk.

Mr. OLVER. The region is a net consumer of milk. There is not enough produced. Even though Vermont produces much more than its consumers, it is a producer of milk that goes to all of the other States. It is really the only one that is a large significant net producer of milk within the region.

All of the others, except perhaps for Maine, are net consumers. So the region as a whole being a net consumer. In the present marketing system, some milk does come in from eastern New York State. The present marketing order does not allow any incentive, anything that would lead those from any greater distance to send in, which is why, as I have said on a couple of occasions in maybe different ways, that this compact can only be a benefit to potential producers from outside.

Mr. GOODLATTE. Considering the legislation that will affect that right now, and in the farm bill next year we may have something that would change those circumstances as well. So, again, this is another factor that we have to take into account.

Is it still true, or not true, that there are more cows than people in Vermont?

Mr. SANDERS. Unfortunately, it is not true. Some of us wish it were.

Let me just pick up on one point you made, Mr. Goodlatte. You indicated in a sense you were a little bit nervous that the concept might spread throughout the rest of the country. And, in all due respect, I think one or two of us recognize that Washington does

not have all of the answers. I don't want to sound like an ultraconservative here, but——

Mr. GOODLATTE. Fine with me.

Mr. SANDERS. Well, if that is the case, then I think you should be sympathetic to this point of view. What we hear time and time again is that Washington is incapable of solving all of the problems for all of the cities and all of the regions. Please appreciate the diversity, the diversity of New England.

Bill Weld is, I would say, the champion free marketer. He is very conservative in economics. He supported this legislation. You have a wide spectrum of views throughout New England.

I think it is appropriate from a conservative point of view, if you like, that what New England has agreed to do makes sense and if the Southwest learns from that, that is not a negative. That is a good thing. That is restoring power to the people, to the States. That is allowing regions to make economic—important economic decisions for their parts of the country.

So I would urge you—I would urge you to allow New England to go forward as it best sees fit. I don't think—I know, clearly, the major concern that you have is if you could say, well, what happens in New England is OK if it doesn't have any impact on other parts of the country. That is a fair question.

I think you will hear from people that perhaps know more than we do. I think perhaps the case that they will make is there is nothing we are doing in New England with this proposal which is going to be negative to any State in the country.

Mr. GOODLATTE. Thank you, Mr. Chairman. I yield back.

Mr. BRYANT. All right. Since Mr. Goodlatte knows a little bit more about this than the rest of the panel, I have let him go a little more than 5 minutes. But let's try to keep it to 5 minutes.

Mr. Watt.

Mr. WATT. I think Mr. Mann was here first.

Mr. BRYANT. Mr. Mann. Excuse me.

Mr. MANN. I don't know enough about this to take the floor for 5 minutes. There is a price program and at some point a farmer that produces milk that is not sold gets some payments; is that true?

Mr. SANDERS. Well, what you have now is a $10—if milk is purchased by the Federal Government at $10.10 per hundred weight, so if there is a surplus, that is what the Federal Government will pay to purchase milk.

Mr. MANN. If the consequence of the compact is that a farmer who is able to sell his milk commercially is able to earn more, will not more farmers produce more milk and will not there be greater surpluses? And does that leave the Federal Government in the position of being obligated to purchase more milk than otherwise would be the case? Whether that is good or bad, is that one of the consequences?

Mrs. JOHNSON. In this whole area of price regulation, the issue of price and volume are the two key issues. And we have struggled in the farm support program for many years with how high should the support price be so that farmers can survive, that you don't attract a volume that burdens the Federal Government.

There are now limits as to how much the Federal Government is obliged to buy and other ways in which we try to control the burden while supporting farmers. We are just saying that some of that responsibility can be shared regionally.

This regional compact group is going to have to deal with exactly those same issues. You know, they are not going to be able to just put the price up for farmers when it will affect consumers, and they are going to have to take into account the inflow of milk from outside the district, too. At a certain point, if too much milk comes in under a price support system, finally stores won't buy any more. There is a limit. It depends on what consumers will buy.

So there is no simple answer here. We are not telling you what the solution is. We are telling you that the region, the States of New England need to have a voice in how these factors are balanced and what price they come up with.

Now that voice is entirely Federal. All that marketing order debate is down here in Washington. A lot of it is influenced by processors and farmers from other parts of the country who have no intention of selling into our market.

We are just saying that the Federal marketing order system is failing, and we have got to have more regional say in this complex process because that is the only way we will retain any regional milk-producing capability, which was the original goal of the marketing order system.

The marketing order system originally said there is a national interest in regional food production. And recognizing that that can only happen if we treat markets differently within a Federal system, it has really failed us, and we are saying now, with very public participation in a very public process, let us try to struggle with the very same factors that the Feds struggled with in setting what is now the current Federal price.

This will not cost the Federal Government anything. There will be no obligation for the Feds to subsidize to this new price level. It will have no effect on the Federal marketing order system which has an enormous effect on our budget. But it will enable us to deal with these same issues. We will not be able to discriminate against out-of-region producers.

So we will be faced with the same volume price issues, consumer-producer interests as have traditionally been the stuff of this kind of process, but we will be able to do it in a way that addresses our people's interests more.

Mr. MANN. The question I was trying to ask is whether there is a Federal cost. I mean, let's assume——

Mr. OLVER. There is not.

Mr. MANN [continuing]. The regional States being able to make their decisions, with whatever consequences, for the prices of the citizens of your States that there might be and whatever competitive effects on producers and milk from other States. When you get all done, if the consequence of higher prices is more milk production, does that have a cost consequence to the Federal Government?

Mrs. JOHNSON. No, because the Federal Government is only obliged by its own marketing order. And so there will be no impact on the Federal Government's obligations.

Mr. OLVER. Actually, OMB has scored this as zero. There is no—as both Nancy and I have indicated, there is no cost to the Federal Government.

The compact is a pretty clever mechanism, actually, with feedback in the system. If, as has been suggested, maybe there might be: Oh, is this going to result in some overproduction? That results in the compact having to self-adjust, to put money back into the Federal system so that what you are worried about does not happen. That is provided for in the compact.

So the circumstances now are that any single State could do an overprice order if they are sufficiently self-contained.

In the New England situation, there is none of the States where we are seeing our farms go out very quickly, very swiftly go out of business. None of them can deal with it individually because they are vastly a consumer State or vastly a producer State. So that the process here is putting them together to produce essentially the provisions of a six-State State under the circumstances that pertain to give us a compact that we can deal—and a feedback mechanism, a pretty modernistic feedback mechanism, that deals with these situations.

Mr. MANN. Thank you.

Mr. BRYANT. Mr. Inglis.

Mr. INGLIS. Thank you, Mr. Chairman.

I am very sympathetic to what you are talking about, particularly the loss of the quality of life. Mr. Sanders, you mentioned that, and I think that that is certainly something that I can identify with. Maybe it is because if I had my druthers and I thought I could make a living, I would be a dairy farmer right now. But since I don't think I can——

Mr. OLVER. A lot of us wish you would.

Mr. INGLIS. Well, there are some similarities to what we do here as to what goes on in the dairy farm business. But I think that is called the spreading stuff.

But, anyway, I have—maybe that is because I grew up in the country, and similar to what Mrs. Johnson said—I guess I should say I grew up in what used to be country, because it was a little town called Bluffton, SC. That is near a slightly more famous place called Hilton Head, and Hilton Head seems to be growing over the bridge, and it is changing. So I very much understand and appreciate all of those things, particularly, as I say, since I would love to be a farmer if I could afford it.

But I have got a—really for—I want to ask a specific question, but before I say that, for the benefit of all of my colleagues that are here, I want to relate very quickly a story that happened to me a year ago.

A year ago, I was serving in drought damage in South Carolina. And wouldn't you know it? The night before I went out to do this, we got the biggest gully washer you have ever seen. About three inches of rain fell within about 1 hour. So, anyway, on the drought tower we were stepping over mud puddles. But it was a little bit strange on the nightly news, but other than that it was a great tower.

But I went to a dairy farm, and the chairman asked what was happening elsewhere in dairy farms, and I can tell you in my dis-

trict from what I understand from my farmers, the same thing is happening: consolidation, number of family farms closing. They just can't make it. And it is a very upsetting thing to me for all of the same reasons you have described.

At one of these stops a farmer was showing me his operation and how he milks the cows up here. And they stand here and then it is all built down a hill, and they wash the leftovers down into a lagoon, let's say, in the back. He was describing all of this.

We were walking back out of the parlor, and the fellow said to me—we had been very relaxed, but suddenly he tensed up because across the parlor he saw this lady, a young lady that was there. And he said, oh, my, there is the lady from DHEC. DHEC is the Department of Health and Environmental Control for South Carolina.

And he said, she is here to talk to me about the lagoon, and he just almost broke out into a sweat. And he said, you know, they want us to pump out the lagoon regularly.

And I said, oh, they have got concerns about the—you know, I thought there were hormones in the cow manure or whatever. And he said, no, it is just cow manure, and they are really worried about the environmental impact of the cow manure. He said, they are going to charge us, make us buy a $50,000 pump in order to pump the cow manure somewhere else.

And I went back to the front of the parlor, where his wife—this is a tough thing to be a dairy farmer. You got to get up at 4 a.m. You got to work all the time. She came out as I was leaving. He had left to go talk to the DHEC lady, and she was almost in tears. She said, you know, Edward probably wouldn't want me to tell you this, but that lady is going to put us out of business. We can't afford $50,000 for a pump.

Now, for my colleagues here, that is the message of what is happening to the farmers in this country. We think that we can come up with these grand environmental ideas here, and they don't have any impact. Well, they are having an impact right now on dairy farms across this country, and the result of that is no mystery. It is not South Carolina's problem. This is a mandate from Washington to South Carolina.

We are responsible for the Colbys' farm going under, if it goes under, because—if, lo and behold, this entire—this very dangerous material called cow manure may end up in the stream. And we certainly need to do something about that, I suppose, and we will come up with grand ideas in Washington as to how to clamp down on cow manure, a very dangerous material.

So if we want to really know what is happening on the family farm, I think that is it.

But, in this connection, what I have got a question about really is—and that is really by way of just saying, overall, let's think about what we do here and not get all involved in these smaller things, because a lot of what we do here generally causes the biggest problem.

But there is one very specific problem that I have got with the Northeast Compact. That has to do with a letter from Senator Kohl and Senator Grassley that I imagine you are familiar with, talking about the *West Lynn Creamery* v. *Healey* case and how the Su-

preme Court has recently held that a Massachusetts pricing order requiring a tax to be paid by producers outside of Massachusetts was unconstitutional.

These two senators argue that the Northeast Compact has exactly the same effect. And they say—and I am quoting from their letter—it places a tax on milk brought into the compact States from out of State with a package bulk farm in the form of compensatory payments and—thereby penalizing all farmers located in the 44 noncompact States.

So what I am interested in knowing, I don't—like everyone else on the panel, except Mr. Goodlatte maybe—I don't know all that much about this specific issue, but I am interested in what your response is to these two senators writing about this compensatory tax.

Mr. OLVER. That is topsy-turvy. I don't understand it. I would certainly like to see the letter to examine it. I have not seen the letter. That has been raised, and now I guess I understand where this concept is coming from. I know of nothing in the compact that does what you have just described.

Mrs. JOHNSON. But I think that some of the Senate amendments address this. So I think the best thing to do is let you hear the rest of the panel, some of whom have much more detailed knowledge of some of these issues, and then these are the kinds of things that we will discuss with you and try to work out in the future. That issue has been raised, I believe it has been addressed, and we are happy to work with you to get this moving.

Mr. SANDERS. Mr. Inglis, I would just say you raised the concern about mandates from Washington. What you are looking at here is an attempt on the part of six States, six legislatures, six Governors, to begin to move away from Washington decisions, and we would look to you in sympathy for this approach.

The second point is while everybody, obviously, is sympathetic to unneeded mandates that causes a burden and costs the farmers, I think we all agree on that; we can disagree as to what is and is not unnecessary.

I think the bottom line in terms of the decline of the family farm in Carolina or anyplace else is the price the farmers are getting for their milk. If your income declined in terms of your real purchasing power by 50 percent over the last 15 years, it would not be a mystery if you were in economic trouble and giving up your business. So what we are fighting for in New England is a way to preserve the family farm.

Jack Reed said it well. It is very important to us that the family farm is preserved in terms of the history of our region, the economy of our region, our environment. Six States have come together to try to do that.

And we think, in terms of the point that you made about Washington mandates, this moves away from Washington. And I think it may, in fact, become a good model for other regions of the country to do the same if they so choose.

Mr. OLVER. Mr. Inglis, looking at this, I have not had a chance to read through and carefully think about the whole of the letter, but the first several paragraphs all relate to a description of what

was, in fact, declared unconstitutional for exactly the reason described here.

But, in fact, the compact here is a system that does quite the opposite. It provides additional money for somebody who sells into that market, which cannot presently happen, cannot presently happen. So, again, to point out at the present circumstances, we are losing our farms, one right after the other, because of a pricing system which no one State can deal with. Nobody from any distance can send into the market because it is not in any way profitable.

If someone from outside does send in, they get the benefits of this order—not a tariff, not a tax on their production. Quite the opposite of what is indicated, as far as I can tell, in the letter. And I think there are others who will address that.

Mrs. JOHNSON. I would just like to say that I am in deep sympathy with your farmer. And, frankly, if we were legislating more rationally in a lot of other areas, this wouldn't be such a crisis. But these farmers have been hit with regulation after regulation after regulation and requirement after requirement after requirement, some of which are sensible, some of which are not.

And I do hope that we will at least be able to change the Safe Drinking Water Act so that people don't have to test for substances that they don't even use in that region. We have got to be far more realistic about what is possible, about the options.

There are many more ways to deal with manure than pumping it out with a $50,000 pump, and we just have got to get far more with it in terms of legislating in a way that allows us to meet our environmental goals and other workplace safety goals and things like that, but with much greater respect for the innovativeness and creativity of the private sector and of individual farmers.

So, it is partly because a lot of costs have been mandated on farmers as well as energy costs have gone up in the northeast, which is entirely dependent on imported oil. It is a different situation than Wisconsin, and yet our marketing order is pegged to Wisconsin. So that is the kind of thing we are up against, and we are asking for regional power to better address regional needs.

Thank you.

Mr. BRYANT. Mr. Watt.

Mr. WATT. Thank you, Mr. Chairman.

I have previously had a discussion with Mr. Olver and Mr. Sanders about this proposed legislation, and so I won't prolong the hearing by asking questions.

I, as you probably know, came up from the Whitewater hearings and was looking for any excuse to get away from that. So I just wanted to express my thanks to you for having such an enlightened hearing.

And, apropos of Mr. Inglis' comments, too much manure in one place can be dangerous I think is the morale of his story. I think I want one of those $50,000 machines to take back down to the Whitewater hearing room.

And, having said that, I will yield back the balance of my time. But if you can keep this going a little while longer, you are saving me from being in much of that—I am affectionately calling it manure. I think you all know the term I would like to use instead.

Mr. BRYANT. OK. Thank you very much.

We thank the panel for being here. We will put our heads to this.

Mrs. JOHNSON. We appreciate your courtesy and patience.

[Recess.]

Mr. BRYANT. With that, we will go back to the subcommittee hearing and invite to the counsel table now our panel. First, the Connecticut Department of Agriculture commissioner, John R.H. Blum. I am sorry—I have gotten ahead of myself.

Mr. BRYANT. Kenneth C. Clayton, Acting Administrator, Agricultural Marketing Service of the U.S. Department of Agriculture. You are alone, I believe at this time, is that right?

Mr. CLAYTON. Mr. Chairman, yes.

Mr. BRYANT. OK. We will go to the panel after you.

Mr. Clayton, we thank you for being here. Go ahead and testify.

STATEMENT OF KENNETH C. CLAYTON, ACTING ADMINISTRATOR, AGRICULTURAL MARKETING SERVICE, U.S. DEPARTMENT OF AGRICULTURE, ACCOMPANIED BY SILVIO CAPPONI, ACTING DIRECTOR, DAIRY DIVISION, AGRICULTURAL MARKETING SERVICE

Mr. CLAYTON. Thank you very much, Mr. Chairman, members of the subcommittee.

We do appreciate the opportunity to appear before you today to comment on H.R. 4560, a bill to provide the consent of Congress to the Northeast Interstate Dairy Compact. With me today is Silvio Capponi, Acting Director of our Dairy Division at the Agricultural Marketing Service.

In the interest of time, Mr. Chairman, I will briefly summarize my statement but request that it be included in its entirety for the record.

Mr. Chairman, the administration has no position on H.R. 4560 at this time. We believe this is a matter that warrants further review and consideration.

Six New England States—Vermont, New Hampshire, Maine, Connecticut, Rhode Island, and Massachusetts—have enacted the Northeast Interstate Dairy Compact into law. H.R. 4560, if enacted, will provide Congress' consent to the compact. Through this compact, an interstate commission is to be formed for the purpose of maintaining dairy farmers in the northeast area. The commission would be authorized to set milk prices in the compact region.

The Northeast Interstate Dairy Compact would impose a regulated class I price at a level above the class I price established through the Federal milk marketing order through the compact region. Processors selling fluid milk products in the compact region would be required to pay producers the price imposed by the compact.

According to the proposed legislation, the compact is designed to complement, not replace, existing Federal milk orders in the region. However, if the Federal order system should be discontinued, the compact is authorized to fully regulate milk pricing as is now done under Federal milk orders.

By way of background, a Federal milk order is basically a legal document issued to regulate the minimum prices paid to dairy farmers by handlers of grade A milk in a specified marketing area.

The compact's provisions are described in very general terms in the legislation. While more specific terms would be developed in the hearing process required under the compact, it is unclear at this time how the actual mechanics of several of the compact's provisions would work.

Under the compact, the commission's authority to impose over-order prices would apply only to milk used in class I fluid products. Milk used for manufacturing purposes, such as ice cream and cheese, which are class II and class III products respectively, would not be subject to compact regulation. All farmers would receive a blended over-order payment based on the region's over-order class I price, regardless of the utilization of their milk.

The class I price established by the compact would be based on the supply-demand balance for milk in the region, the costs of producing milk, the prevailing price for milk outside the regulated area, the purchasing power of the public and the price necessary to yield a reasonable return to milk producers and distributors.

The compact pool would be funded by the over-order charges on fluid milk sales in the compact region. Milk used by processors in fluid milk product sales in the compact's area, regardless of its source, would be subject to the compact over-order charge and would be pooled. Class I milk brought into the compact area would be subject to a charge, and milk marketed outside the compact area would be granted credits from the pool.

Over-order charges above minimum class I prices are currently in operation in almost all Federal order markets. However, in most markets, these charges are negotiated by cooperative associations rather than being mandated by a regulatory agency. Federal milk orders would likely be able to operate along with the compact in New England, unless the class I overorder price mandated by the compact exceeded the minimum Federal order class I price by too wide a margin, in which case there would be direct inconsistencies in the two programs and the compatibility of the two programs could be questioned.

Raising class I prices would likely result in higher retail prices for fluid milk products in New England.

Under the compact, the commission could impose charges on milk coming into the compact's region which would be shared with producers in the region and equalize the cost, through handler credits, of milk going out of the region. In effect, northeastern consumers would finance, through higher prices, exports by the region's handlers of their milk into other regions to compete with the handlers in those areas.

By increasing milk prices to farmers, this proposal could be expected to improve the New England region's dairy farm incomes and the vitality of its rural communities.

The compact also provides that actions shall be taken to ensure that the dairy farmers in this region would not increase milk production as a result of higher returns. Such action could possibly be some form of supply management using marketing quotas which have been found in the past to add to the price of milk.

In view of the comments I have made today, the administration believes that further consideration is warranted to fully assess the impact of H.R. 4560.

Mr. Chairman, this concludes my statement. My associate and I would be glad to respond to any questions that you or other members of the subcommittee might have.

Mr. BRYANT. Thank you, Mr. Clayton.

[The prepared statement of Mr. Clayton follows:]

Statement of Kenneth C. Clayton, Acting Administrator
Agricultural Marketing Service
United States Department of Agriculture
before the
Subcommittee on Administrative Law and Governmental Relations
House Committee on the Judiciary
on H.R. 4560
August 3, 1994

Mr. Chairman and Members of the Subcommittee:

We appreciate the opportunity to appear before your subcommittee to comment on H.R. 4560, a bill "To provide the consent of Congress to the Northeast Interstate Dairy Compact." Accompanying me today is Silvio Capponi, Acting Director, Dairy Division, Agricultural Marketing Service.

Interstate compacts are agreements between two or more States that are sanctioned by Article I, Section 10 of the U.S. Constitution, which states, in part, that:

"No State shall, without the Consent of Congress, * * * enter into any Agreement or Compact with another State * * * ."

Six New England states -- Vermont, New Hampshire, Maine, Connecticut, Rhode Island, and Massachusetts -- have enacted the Northeast Interstate Dairy Compact (compact) into law. H.R. 4560, if enacted, will provide Congress' consent to the compact. The Senate Judiciary Committee approved the companion bill, S. 2069, on June 23, 1994, with an amendment.

Through this compact, an interstate commission -- composed of delegations from each New England State -- is to be formed for the purpose of maintaining dairy farmers in the northeast area. The commission would be authorized to set milk prices in the compact region.

The Northeast Interstate Dairy Compact would impose a regulated Class I price at a level above the Class I price established through the Federal milk marketing order for the compact region. Processors selling fluid milk products in the compact region would be required to pay producers the price imposed by the Compact. According to the proposed legislation, the compact is designed to complement, not replace existing Federal milk orders in the region. However, if the Federal order system should be discontinued, the compact is authorized to fully regulate milk pricing as is now done under Federal milk orders.

Federal milk orders are authorized by the Agricultural Marketing Agreement Act of 1937. Under this law, the Secretary of Agriculture may establish Federal milk orders that apply to buyers (or handlers) of milk. Orders are initiated by dairy farmers, often through their cooperatives, and can be issued only with the approval of two-thirds of the dairy farmers in the affected market. Basically, a milk order is a legal document issued to regulate the minimum prices paid to dairy farmers by handlers of Grade A milk in a specified marketing area.

Milk orders are designed to assist farmers in developing steady, dependable markets and help correct conditions that result in price instability and disorderly marketing. Under the orders, dairy farmers are assured a minimum price for their milk that takes into consideration the economic conditions throughout the year. This high degree of assurance makes dairy farmers willing to make the heavy investments in milk cows and equipment that are needed to produce the high-quality milk that consumers want.

Under Federal milk orders, the minimum prices that handlers are required to pay to producers are established according to the use made of the milk. Milk used in perishable fluid products is designated Class I and commands the highest price. Class I prices are established at a level to assure an adequate supply of milk for the fluid market. These

prices are also established on a nationally coordinated basis wherein the major factor moving prices is supply-demand conditions. Milk used in soft products such as ice cream and cottage cheese is Class II and has a lower price. The lowest price is for Class III, which includes milk that is manufactured into storable products, such as butter and hard cheeses.

Essentially, all orders operate marketwide pools for determining producer prices. Under marketwide pooling, the total order value of the milk used in all classes by all handlers in a market is divided by the total milk deliveries to determine the blend price for the market. The blend price is paid to each producer or cooperative under the order, except for adjustments for quality and the location at which the milk was received by the handler. Thus, each producer shares proportionately in the returns generated by all milk uses in the market.

The compact's provisions are described in general terms in the legislation. While more specific terms would be developed in the hearing process required under the compact, it is unclear at this time how the actual mechanics of several of the compact's provisions would work.

Under the compact, the commission's authority to impose over-order prices would apply only to milk used in fluid, or beverage, products (Class I). Milk used for manufacturing purposes, such as cheese and ice cream, would not be subject to compact regulation. All farmers would receive a blended over-order payment based on the region's over-order Class I price, regardless of the utilization of their milk.

The over-order Class I price would be established by the compact based on the supply-demand balance for milk in the region, the costs of producing milk, the prevailing price for milk outside the regulated area, the purchasing power of the public, and the price necessary to yield a reasonable return to milk producers and distributors. Maximum levels

of the established over-order Class I price are specified in the compact based on the rate of change in the Consumer Price Index from a specified 1990 base of $1.50 per gallon.

The compact pool would be funded by the over-order charges on fluid milk sales in the compact region. Milk used by processors in fluid milk product sales in the compact's area, regardless of its source, would be subject to the compact over-order charge and would be pooled. Class I milk brought into the compact area would be subject to a charge, and milk marketed outside the compact area would be granted credits from the pool.

Over-order charges above minimum Class I prices are currently in operation in almost all Federal order markets. However, in most markets, these charges are negotiated by cooperative associations rather than being mandated by a regulatory agency. Federal milk orders would likely be able to operate along with the compact in New England, unless the Class I over-order price mandated by the compact exceeded the minimum Federal order Class I price by too wide a margin, in which case there would be direct inconsistencies in the two programs, and the compatibility of the two programs could be questioned.

Raising Class I prices as a result of this legislation would increase retail prices for fluid milk products in New England. However, we have been informed by the proponents of the compact that New England consumers are willing to pay higher prices for milk in order to provide additional income to dairy farmers that would keep more dairy farmers in business in their respective region.

As noted above, the commission could impose charges on milk coming into the compact's region which would be shared with producers in the region, and equalize the cost, through handler credits, milk going out of the region. In effect, northeastern consumers would finance, through higher prices, exports by the region's handlers of their milk into other regions to compete with the handlers in those areas.

A recent summary of dairy farm operations in the Northeast published by the Farm Credit Banks of Springfield, MA, reports that net earnings per cow on Northeast dairy farms dropped sharply in 1993, largely due to the decline in average milk prices. Nearly half of these farmers had negative cash margins last year. By increasing milk prices to farmers, this proposal would be expected to improve the New England region's dairy farm incomes and the vitality of related rural communities.

The compact also provides that action shall be taken to ensure that the dairy farmers in this region would not increase milk production as the result of higher returns, although the actions to be taken to accomplish this are not specified. For example, the action could possibly be some form of supply management using marketing quotas. However, such marketing quota programs have been found in the past to add to the cost of producing milk, freeze regional milk marketing patterns and retard the adoption of technological advances.

The commission established by the compact would have the power to investigate existing regulations and to prepare model dairy regulations regarding the inspection of farms and plants, sanitary codes, iabels for dairy products, standards for dairy products, producer security programs and fair trade laws. The commission could also review the existing market structure and recommend changes that would promote more efficient assembly and distribution of milk in this region. Authority would be provided to examine current economic forces affecting milk producers, the dairy cost-price situation, financial conditions on dairy farms, and the need for an emergency order to relieve critical conditions on dairy farms.

In view of the comments I have made today, the Administration believes that further consideration is warranted to fully assess the impact of H.R. 4560. We, therefore, take no position on the legislation at this time.

Mr. Chairman, this concludes my statement. My associate and I will be glad to respond to any questions that you and other members of the subcommittee may have.

Mr. BRYANT. Your written statements indicate that if the interstate commission sets its minimum price or the over-order price too high, the interstate program might become incompatible with the Federal program. Why is that the case?

Mr. CLAYTON. Mr. Chairman, under the Federal order program, the basic idea is to set a price surface across the entire United States that creates a reasonable balance of production relative to the demand for milk and milk products across the country. It would seem that if one part of the country got tremendously—became tremendously inconsistent with that price surface that is created for the entire United States, then it could tend to put things out of kilter. So if the differential became too large, then it might disrupt the overall price surface which is established for the country as a whole.

Mr. BRYANT. You stated that if the Federal order system should be discontinued, the compact would be authorized to fully regulate milk pricing as is now done under Federal milk orders. What is the likelihood of it being discontinued?

Mr. CLAYTON. Well, I think it is difficult to speculate. I think it comes back to the previous question which you raised with me which is, fundamentally, if the price structure established under the compact did not get too far out of line with what was established under the Federal order system, then they would be compatible, they would continue. If at some point those prices became so different, then it might render the Federal order ineffective or moot, in which case the Federal order perhaps would no longer serve a purpose, and it would have to be terminated.

At that stage, should that happen, then the compact provides, I think as amended in the Senate Judiciary Committee, a process whereby the compact could come in and price the milk going into uses other than just fluid consumption.

Mr. BRYANT. Section 20 of the bill states that the compact is open not only to the six New England States that we have talked about but also to Delaware, Maryland, New Jersey, New York, Pennsylvania, Virginia, and any other States which are contiguous to any of the named States and to any participating States. It seems that all 48 States ultimately would be eligible to participate if this happened. Is that correct?

Mr. CLAYTON. You probably would have to ask those who drafted the compact for a precise answer on that.

I think the intent is to limit it to an area in the northeastern United States, recognizing that there is a set of States, as has been indicated, which might be most directly interested but recognizing also that if all of those States were to choose to participate then there may also be some States at the periphery of that collection of States which might logically have an interest in participating as well.

Mr. BRYANT. Well, what happens if, as Mr. Goodlatte asked earlier, everybody in every region of the country decides to do this? What would be the impact?

Mr. CLAYTON. I think from the standpoint of the Federal order system, which is where we have responsibility, I would go back to my earlier answer in terms of the ultimate consistency between the

Northeast Compact and the Federal order system, and I think that same issue or argument would apply across the country.

Were we to have a whole series of regional compacts, I think then the question would be how differently would they price milk from the prices which would be established under a Federal system. If at some point those prices became so disparate from what might be established under a Federal system, then it perhaps would raise questions as to the viability of the Federal system.

Mr. BRYANT. No more questions. Mr. Goodlatte.

Mr. GOODLATTE. I don't have any questions.

Mr. BRYANT. Mr. Inglis.

Mr. INGLIS. No questions.

Mr. BRYANT. Thank you very much for being with us today.

Mr. CLAYTON. Thank you.

Mr. BRYANT. We will invite to the witness table now our panel: John Blum, commissioner, the Connecticut Department of Agriculture; James Erickson, the International Dairy Foods Association, who is president and CEO of Anderson Erickson Dairy Co. He is also speaking on behalf of the Milk Industry Foundation, the National Cheese Institute, and the International Ice Cream Association. Charles M. English, Jr., counsel of the Southern Food Group, Inc.; and Daniel Smith, executive director of the Northeast Interstate Dairy Compact committee.

STATEMENT OF JOHN R.H. BLUM, COMMISSIONER, CONNECTICUT DEPARTMENT OF AGRICULTURE

Mr. BLUM. Thank you, Mr. Chairman. Can we go in the order that you enumerated?

Mr. BRYANT. Where is Mr. Blum?

Mr. BLUM. Right here, sir.

Mr. BRYANT. Very well. Mr. Blum, go ahead. Each of you try to keep your statement to 5 minutes, if possible.

Mr. BLUM. Chairman Bryant and members of the House subcommittee, thank you very much for allowing me the opportunity to testify in support of your consenting to the Northeast Interstate Dairy Compact, H.R. 4560.

I would like to waive reading my formal statement and continue with the questions that have been asked here, because they are extremely good questions.

I would like to preface that by saying that I think what you are up against is weighing what you are being told is happening in New England against what might happen in the rest of the Nation, and I think you have got some safeguards in letting us have the compact as an experiment in regional self-regulation that is entirely consistent, as I see it, with the existing Federal system.

It is tough to weigh what might happen, but, as I understand it, you have a number of measures which can limit the experiment, circumscribe the extent to which New England is permitted to use this device, and, ultimately, in either the farm bill which will come too late, unfortunately, for the dairy industry in New England—or a lot of it—or in other legislation preempting the field which has not been done, you can eliminate any conceivable balkanization that this measure could create.

So you have that reserve authority. You have the whip. In the meantime, we are asking to be allowed in New England to save our dairy farmers.

Let me address some of the specific concerns that you have raised about this. And can I begin with manure? Because the disposal of manure is a cost factor in New England. And, basically, what we are dealing with here in the compact, is trying to allow our farmers to cover their costs of producing milk, as a fresh, perishable commodity.

Perishability is another limitation that hasn't been raised here in talking about the access of Texas marketers to the New England market. We are dealing here not with wheat or cotton or any other nonperishable commodity but a core part of our local food supply. Manure disposal is a limiting factor on increasing supply in New England. We are not going to be putting on hundreds of thousands of more cows when we can't cope with the cost of dealing with the manure of the cows that we have already got.

It is also, as I say, a higher part of the farmers' cost in an area where our farms are cheek by jowl with our suburbs and our cities. So that is a part of our picture.

The other thing, just to put this in proportion, is that our total milk supply in New England is about 3 percent of the national supply. So we are not talking about any ability of New England to flood the market in the rest of the country.

As a matter of fact, the milk supply increase has been largely in the Western States. California is up 6 percent. The east is level and, in some cases, declining. And this affects the index, the pricing index, under the Federal marketing system because the increase in supply in the Western and Midwestern States has a great deal more to do with the price of cheese, barrel and block cheese, in the Minnesota-Wisconsin formula than anything we could do out in New England.

As to differences in cost across the Nation—one of the questions I remember hearing was the difference in cost of production among the States. I don't have the figure for Texas, but California, apparently, can produce milk at $8 a hundredweight compared to $14 a hundredweight in New England. So we are dealing with a sizable regional drawback.

Congressman Goodlatte raised the problem of tariff barrier—I believe that was your emphasis—and whether we are creating a situation here that would interfere with a free market economy in milk.

To begin with, it is not a free economy. As Congresswoman Johnson pointed out, there have been Federal policies which have given a cost advantage to the Western States, and we are looking to the compact this enable us to level the playing field.

I see my time is up, but I would like to continue to address your questions to the extent you have them.

Mr. BRYANT. Well, go ahead and finish. I don't want to invite a whole lot more, but if you need to wrap it up, it is all right.

Mr. BLUM. On the constitutional issue, I read last night in Dan Smith's testimony, the letter from Professor Fallon at the Harvard Law School, and it seems to me that he puts the constitutional question in its proper perspective: That is, despite the reasoning in

the single State cases that have found over-order pricing by a State to interfere with interstate commerce, Congress has the ability to cut across those decisions and delegate the dormant interstate commerce power that you have under the Compact Clause and give your consent to this regional experiment which is limited in scope.

I would also like to talk about the political effect of the compact upon the consumer, because I know that is something that many of you have in mind. I think if you had a referendum of consumers in New England about paying a couple of cents more for every half gallon of milk it would pass overwhelmingly, except possibly in the deepest pockets of poverty. But, even there, I think there is a recognition that the continuation of the farm economy does so much for the whole food distribution system in our area and that prices could be more affected by a shortage. Floods in Georgia have an impact on the ability to get perishable commodities into our region.

The consumer can veto—or the consumer States, Massachusetts and Connecticut, can veto—a pricing order under this compact setup. We had this debate, in every one of our legislatures that passed the uniform compact legislation, and the net outcome was that all six of our legislatures and Governors concluded that the consumer interest is adequately protected in utilizing the compact device.

Mr. BRYANT. Thank you.

Mr. BLUM. Thank you.

[The prepared statement of Mr. Blum follows:]

STATE OF CONNECTICUT

DEPARTMENT OF AGRICULTURE
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STATEMENT OF

JOHN R. H. BLUM
COMMISSIONER
CONNECTICUT DEPARTMENT OF AGRICULTURE

REGARDING

H.R. 4560

NORTHEAST INTERSTATE DAIRY COMPACT

BEFORE THE

U.S. HOUSE OF REPRESENTATIVES
COMMITTEE ON THE JUDICIARY

SUBCOMMITTEE ON ADMINISTRATIVE LAW AND GOVERNMENTAL RELATIONS

August 3, 1994

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Testimony before for U.S. House Committee on the Judiciary
Subcommittee on Administrative Law and Governmental Relations
H.R. 4560
Rayburn House Office Building, 2237
August 3, 1994
10:00 a.m.

Chairman Bryant and Members of the House Subcommittee on Administrative Law and Government Relations

Thank you for inviting me to testify this morning in support of the Northeast Interstate Dairy Compact, H.R. 4560. My name is John R. H. Blum. I am the Commissioner of Agriculture for the State of Connecticut and the President of the Northeastern Association of State Departments of Agriculture. In addition, I speak on behalf of our National Association of State Departments of Agriculture which has also unanimously endorsed support of the Northeast Interstate Dairy Compact (See Ex. 1). Most importantly from my standpoint, I represent the Ed Platt family, the Stearnses, the Ferrises, the Damianis, the Cherniskes, the Staebners, the Jacquiers, the Tanners and the other 310 families who are the dairy farmers of Connecticut. This roster is down ten percent from last year. It is half of what it was ten years ago, and those families who are left, some of whom have been dairying for four or more generations, are financially threatened as never before (See Ex. 2). In fact, the Compact proposal represents the last clear chance, the last best hope, for their survival. I would like to make just four points in seeking your consent to the Compact proposal.

One: The Compact represents a hard-won, common initiative of six New England States, their respective Governors and Legislatures, to help solve a problem of emergency proportions for the region.

Two: The Compact is not in itself a solution of the problem. It is <u>enabling</u> legislation to create a mechanism -- a Commission representative of the milk producer, marketer and consumer interests in each state which will address, and promulgate orders with respect to, milk pricing and milk supply in the region.

Three: Passage of the Compact will <u>not</u> adversely affect the milk industry in other sections of the Country, and

Four: The Compact will provide a means for complementing rather than replacing the Federal Marketing Order System. It is <u>not</u> a move to withdraw from this system, or weaken it, but simply to make it operate better with respect to a region with unique cost of production problems. Because of the acute nature of these problems we cannot afford to wait for improvement of the Federal Marketing Order System in the 1995 Farm Bill, but the Compact would not interfere with any improvements achieved in that legislation.

Let me begin with the perspective of my own State. Connecticut's 318 remaining dairy farms produce 528 million pounds of milk a year from 34,000 cows and yet we are a net importer of milk. A milk deficit state. Our total production represents 12% of New

England and .3% of U.S. production. If consumed entirely within our borders our production would only supply 70 percent of Connecticut's annual fluid milk needs. Our problem, which we share with the other New England States, is that our farmers cost of production is about 2 cents a pound, or $2 a hundredweight, higher than the average price received at the farm gate for milk during 1993. And as of July, the price is $1.48 a hundredweight lower than last year's. The present index for setting the price is the Minnesota-Wisconsin price of block and barrel cheese, while adjusted slightly for the two Orders which affect our region. This price fluctuates widely and has no reference to the costs of inputs such as labor, taxes, insurance, feed, environmental regulation which make milk in New England almost twice as costly to produce than in the 2000 cow milk factories of California.

The Compact would afford a mechanism for addressing the coverage of his cost of production for the Connecticut producer, while addressing the needs of the region's consumers and milk processors. The Compact concept has been with us for ten years. It gained momentum and enactment in the six New England States in the course of the last two years, while single state efforts to provide over-order premium prices were struck down by the Courts. The last of these was the Massachusetts Emergency Pricing Order which was held unconstitutional by the United States Supreme Court in June. Only under the Compact clause of the U.S. Constitution can states band together legitimately to cut across the interstate commerce clause in addressing a major regional problem. Over the years there have been about a hundred and severely interstate Compacts approved by Congress. Please bear in mind that the proposal before you has been aired, debated and voted upon in the Legislatures in each of the six New England States. Some of them, like Vermont, export more milk than they import, and others like my own Connecticut and Massachusetts import more than they export. The Compact proposal has been vetted by consumer interests and it has been unanimously supported by the New England Governors' Conference. (See Ex. 3)

We were asked in our State hearing by one State Senator, "Why keep dairying in New England? Why not treat milk as a national commodity the way wheat is treated and import it all from other parts of the Country?" The answer, I think to this is two-fold. First, milk is fresh and perishable and, secondly, the dairy farmers are an integral part of the economic and environmental fabric of the New England States. In Connecticut the dairy farms utilize 80 percent of the 175,000 acres of crop land within the state. Dairy families are literally the stewards of the large part of our open space which makes the state as attractive to the businesses, investors and visitors who provide the economic backbone of the state. If our dairies were gone and we were dependent upon producers outside the region for milk and milk products, the consumers of our states would be at the mercy of the shortages and spoilages created by such conditions as the recent flooding suffered in Georgia. Milk is a core food in our homes and schools and we need the local sources to maintain the health and nutrition of this core food.

How would the existence of a Compact among the New England States affect the dairy industry in the rest of the Country? Although we had discussion in our National meeting and questions from Commissioners from other regions of the nation, these were

resolved in favor of this initiative of six states. I think the other states recognize that New England's total output even if higher producer prices were set by the Compact Commission would not materially increase the milk supply outside the region. The increase in supply would be a drop in the bucket. It is currently said that the milk supply for the Country is increasing at an annual rate of about one percent. This comes from the Western states while the East, as a whole is declining. From a pricing standpoint, higher producer prices in New England would seem, if anything, to limit the export of milk from our region to other parts of the Country, by making us less competitive with producers elsewhere. I know some milk handlers like have expressed fears that the dairy processing business within New England would be put at a competitive disadvantage with dairy plants outside the region but to the extent that these plants ship into the New England region, their prices would be regulated at the same level as plants within the Compact area.

Does the Compact set a precedent which could impact the dairy industry nationally in a negative way? I think the answer to that is that there are states that are doing very nicely in the dairy business without any supplement of the Federal Marketing Order pricing. States like California where the cost of production is almost half of what it is in New England. There are others which could stand to benefit from a similar Compact or the expansion of ours. In this regard, any further Compact efforts must come before this body and should be considered on their own merits as an initiative of the states involved.

There has been a lot of misinformation and misunderstanding as to the relationship between the Compact proposal and the Federal Marketing Order. First this is not a secession of New England from the Federal system. The States could band together and decide to do that. Instead they have united on a mechanism which will supplement the Federal Marketing Order and make it work better in the region than it presently does. In that sense it can be counted a support for the Federal system rather than a substitute. The next question is, well, if that is true, why not approach the same objectives through amendment of the Federal Marketing Order through the 1995 Farm Bill. The short answer to that is that could take another two years and by that time if we don't have the Compact we won't have the dairies.

Let me close by saying that I would like to be able to go back to Connecticut and look directly into the eyes of the younger dairy farmers who have made their lifetime bets on the business from which their forebears have eked out an increasingly difficult living. I would like to be able to say to them: "It's going to get better. We finally have means of addressing the fundamental imbalance that you face in making your living milking cows. The imbalance is caused by the fact that every input that you have -- labor, feed, insurance, workmens' compensation, land, taxes has become more expensive while the price of milk has not kept pace." Maria and John Nye are young dairy farmers in Litchfield County, Connecticut. They are in their 30's with young kids coming along. They milk 200 cows, 3 times a day. They pay their help more than they take out of their farm each year. They have foregone even the leisure time that is taken for granted by us in other pursuits. They have just returned from a brief trip to Utah with a neighbor, Mike Cherniski, who is also a third generation diary farmer. They have been looking at dairying in Utah as a desperate

alternative to continuing to farm in Connecticut. They love our state. They are committed to our state and contribute to its economy and to its moral fiber. They are an important part of the future of Connecticut, in the view of those of us who are in public office and we would like to be able to tell them that help is on the way.

EXHIBIT 1

NATIONAL ASSOCIATION OF STATE DEPARTMENTS OF AGRICULTURE
1156 15TH STREET, N.W. • SUITE 1020 • WASHINGTON, DC 20005
TELEPHONE: 202/296-9680 • FAX: 202/296-9686

POLICY STATEMENT

NORTHEAST INTERSTATE DAIRY COMPACT

The National Association of State Departments of Agriculture advocates federal legislation such as that which would allow for the Northeast Interstate Dairy Compact and the formulation of similar organizations in other regions.

The Northeast Interstate Dairy Compact would establish an interstate commission with power to raise the price paid to dairy farmers by milk processors. The commission's authority would complement the existing federal milk marketing program, which sets a regulated, minimum farm-price for milk through an assessment on processors. The Compact commission would be authorized to raise the farm price above the federal minimum level.

The Compact is designed primarily to respond to the chronic problem of inadequate dairy farm prices, which increasingly threatens the viability of the region's dairy industry. Given the importance of the industry and dairy farms to the economies, environment and culture of the states, each state has repeatedly tried to address the problem. These individual state efforts have all run afoul of the interstate commerce clause of the U.S. Constitution. Joint state action under the Compact, premised on Congressional approval, overcomes this constitutional infirmity.

While designed primarily to assist the region's dairy farmers, the Compact is premised also on the assurance of control by the region's consumer states over the regulatory process. Specific Compact provisions include: consumer representation from each state, a requirement that two-thirds of the states, rather than a simple majority, approve any price regulation, authority for each state to exempt itself from the regulation even if approved by all the other states, and a cap on the commission's pricing authority.

The commission's pricing authority would be exercised through a formal hearing process. Testimony would be presented by all market participants, with concentration on farmer costs of production and consumer ability to pay. After deciding upon an amount, the commission would hold a producer referendum on the proposed price. If approved by the producers, the Compact-established price would become the regulated price for the transaction between processor and farm for all fluid milk consumed in the Compact region. The regulated price would be legally enforceable by the Commission in state and federal court.

The Compact-established price would be administered in much the same manner as the federal program. As with the federal program, the proceeds of the Compact assessment would be pooled by the Commission and paid out to dairy farmers. Because of this similarity in design, the federal program

- over -

administrator is expected to assist in the administration of the Compact. This will keep administrati costs to a minimum. Any incidental administration costs will be borne by processors; there is no cost member states or the federal government.

Most important, as with the federal program, all milk purchased by fluid processor for sale in t Compact region would be subject to the Compact assessment, regardless of the location of the supplyin farmer. For example, milk purchased from a New York farmer for ultimate sale in the Boston mark would be subject to the assessment, even if New York was not in the Compact.

This authority to assess milk purchased from farmers residing in non-Compact states is the primary benef of establishing the Compact with the approval of Congress. Regulation of the price of imported mil would ensure that the price is not undercut, so that all processors and farmers in the Compact regio compete on an equal footing.

Coupled with the pricing authority, the Compact directs the commission to devise a method to ensure th assessment does not result in increased, surplus milk production. The Compact's continued viability wil depend on the effectiveness of this program.

The commission's regulatory authority would apply only to the fluid, or bottled, component of th marketplace. Processors purchasing milk for manufacturing purposes such as cheese and ice cream woul not be subject to a Compact regulation.

Under the interstate compact clause of the United States Constitution, to be established, the Compact must be enacted into law in identical form by at least three member states of the proposed Compact region, and be ratified by Congress. The region includes the Atlantic coast states from Maine to Virginia, Pennsylvania, and states contiguous to these states.

A nucleus of the six New England states — Vermont, New Hampshire, Maine, Rhode Island, Connecticut, and Massachusetts — have enacted identical Compact language. The Compact passed by these states is now being prepared for formal presentation to Congress.

February 27, 1994

EXHIBIT 2

dairy

February 25, 1994

Dairy vitals for 1994 . . .

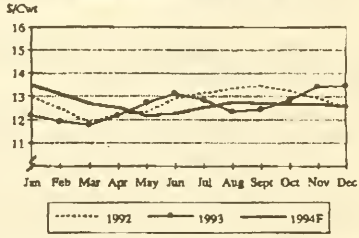
- Average farm milk price up 25 cents (Figure 2)
- Dairy farm profitability slightly higher than 1993
- Feed costs up 10 percent
- Interest rates up slightly
- BST approved, but marginal impact on total production

1995 outlook . . .

- One dollar decline in average milk price
- 3 percent rise in input prices

Figure 1

Monthly Minimum Blend Price (Federal Milk Marketing Order 2)



NOTE: 3.5% milk, 201-210 mile zone.

Figure 2

Northeast Federal Order Blend Prices

	New England*	New York-New Jersey**	Middle Atlantic***	Western New York***	E Ohio-W PA***	Northeast Benchmark
1989	$13.26	$12.90	$13.55	$12.90	$13.05	$14.46
1990	14.29	13.79	14.63	13.82	14.18	15.35
1991	11.90	11.61	12.27	11.62	11.78	12.91
1992	13.14	12.87	13.56	12.76	13.07	13.77
1993	12.73	12.53	13.06	12.51	12.72	13.41
1994E	12.98	12.78	13.31	12.76	12.97	13.66
1995E	11.98	11.78	12.31	11.76	11.97	12.66
5-Year Average	$13.06	$12.74	$13.41	$12.72	$12.96	$13.98

*Zone 21, 3.5% milk.
**201-210 milk zone, 3.5% milk.
***Priced at major city in the marketing area, 3.5% milk.
E = Estimated.
NOTE: Federal/State order prices are minimum blend prices on a farm milk check basis.

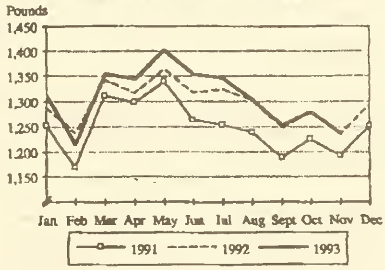
Why wasn't 1993 a better year?

Milk prices continue to be very sensitive to small changes in milk production. Price extremes in 1989, 1990, and 1991 are good examples. In 1993, milk markets were buffeted by uncertainties regarding the impact of wet weather on Midwestern production and by expectations raised by an improving consumer economy.

National milk production in 1993 decreased less than one-half percent over 1992—well below the trend of 1.5 percent growth—as milk per cow dipped to 1992 levels (Figure 3). Poor quality crops and declining cow numbers in Minnesota and Wisconsin, which account for 20 percent of the nation's milk supply, reduced milk output by 4 percent during 1993. In addition, Northeast milk production declined 1 percent, largely due to lower milk output per cow. However, milk production in the West grew nearly 4 percent despite heavy rains during the summer.

Figure 3

Milk Per Cow–United States



Despite slightly lower milk production, 1993 blend prices (marketing year basis) declined an average of 36 cents per cwt.—25 cents below the 5-year average and 89 cents above 1991's average price. Some farm businesses experienced larger declines due to further erosion of premiums gained in the early 1990s. 1993 was another unique year for milk markets as the Minnesota-Wisconsin manufacturing milk price peaked twice—in May and again in November—as cheese manufacturers and buyers responded to changing conditions in the Upper Midwest. This double peak in milk prices, however, cloaked tight cash flow conditions for many Northeast dairy farmers.

Milk price response to tightening milk supplies was less than forecast in May because:

- California's influence on cheese markets is increasing
- Commercial stocks of cheese were adequate
- Consumer demand was sluggish

Where were consumers in 1993?

Economic recession has been used as a reason for sluggish growth in dairy product consumption. The resumption of economic growth was expected to boost dairy product demand and provide a lift to milk prices. 1993 brought moderate growth in the economy and personal income, but improvement in consumer demand for dairy products was surprisingly absent. Some demand issues affecting 1993 milk prices include:

- A stellar performer in the 1980s, Italian cheese demand (mozzarella) has peaked.
- Fluid milk sales have been eroded by slow population growth and declining per capita consumption.
- Health concerns over fat intake continue.

Butter sales were higher in 1993 as lower prices stimulated increased use by food processors. However, nonfat dry milk sales were down due to weak export demand.

Bank it in the first quarter of 1994 . . .

For projection purposes, it is recommended that the average milk price received in 1993 be increased by 25 cents for 1994 (Figure 2). However, continued price volatility could result in substantially higher or lower prices than the forecast. Meaningful cash flow budgeting requires more information than annual averages, however. Therefore, a monthly forecast is presented in Figure 4. Generally, stronger milk prices early in 1994 provide dairy farmers an opportunity to rebuild cash reserves in preparation for weaker milk prices later in the year (Figure 1). Reasons for strong prices early in 1994 include:

- Market strength in late 1993 persisting into 1994.
- Continued milk production difficulties in the Upper Midwest.
- High feed prices will restrain milk production.
- Cumulative impact of BST will occur later in the year.
- Economic growth remains a plus for demand.
- Market psychology has kept cheese prices higher than anticipated.

Figure 4
Change in the Blend Milk Price From the Previous Month

Use farmers' actual November 1992 milk price as a starting point $________.

[redacted]

January 1993	+2¢	$13.50
February	–39	13.11
March	–42	12.69
April	–15	12.54
May	–33	12.21
June	+9	12.30
July	+26	12.56
August	+23	12.79
September	–4	12.75
October	–4	12.71
November	–3	12.68
December	–3	12.63
Average 12/93 to 11/94		$12.53
Average 12/92 to 11/93		$12.78
DIFFERENCE		+25¢

- No adjustments made for individual co-op/handler premiums.

Figure 5

Dairy Farm Budgeting Factors
Preliminary 1993 and 1994 Forecast

	Basis of Change From Previous Year	Actual 1992	Preliminary 1993	Forecast 1994
Income				
Pounds Sold Per Cow	% change	+4.3	+1.0	+2.5
Milk Price Per Cwt.				
• Blend (1)	¢ per cwt.	86¢	–37¢	+25¢
• Premiums	¢ per cwt.	0¢	0	0
Cattle & Calf Sales	% change	–5.6	–7.0	0
Other	% change	+8.0	+5.0	+8.0
Nonfarm Income	% change	+49.0	+6.0	+6.0
Expenses				
Labor	% change	+7.0	+3.0	+3.0
Repairs & Maintenance	% change	+20.0	–10.0	+2.0
Feed	% change	+10.0	0.0	+10.0
Fertilizer & Lime	% change	+6.0	–3.0	+4.0
Fuel & Oil	% change	+2.0	–4.0	0.0
Interest (2)	% change	–15.0	–3.0	+4.0
All Other Expenses	% change	+7.7	+2.0	+3.0
Marketing & Hauling	% change per cwt.	+22.0	+5.0	+3.0
Assessments	¢ per cwt.	12¢	14¢	17¢
Family Living	% change	+2.0	0.0	+3.0

(1) Change in marketing order minimum price.

(2) Depends upon debt outstanding and interest rate. The prime rate is expected to be 25 basis points higher in 1994 than 1993.

NOTE: These budgeting factors are for a farm with no change in the number of cows. Further adjustments are required if there is a significant change in herd size.

The second half of 1994 is more difficult to call. This forecast is based on a rebound in milk production and a major weakening of farm milk prices similar to what occurred in the second half of 1992. By next November, the farm price of milk would be 80 cents per cwt. below the 1993 level. Factors expected to increase milk production and depress milk prices in the second half of 1994 include:

- *"Normal"* weather this summer improves forage quality and availability.
- Surviving Midwest producers will need to improve cash flow and rebuild balance sheets.
- Farmers will respond to good milk prices early in 1994.
- Impact of BST use will gradually build throughout the year and into 1995 and 1996.

The 5-year average milk price remains a good tool for long-term cash flow budgeting. With the aid of good weather and BST, higher milk production will definitely put downward pressure on prices in 1994 and 1995. As a result, milk prices similar to 1991's are quite likely in 1995, especially if dairy product demand remains lackluster. To maintain net income and cash flow, farmers must continually improve productivity per cow and per worker hour and/or expand the operation to generate more business volume.

Costs emerging as a factor in 1994 . . .

Milk price volatility has been offset in the past couple years by stable input prices. Excessive rain in the Midwest and dry conditions in sections of the Northeast and Southeast have upset this stability. Ironically, higher farm incomes in 1993 will increase demand for some inputs, *further pressuring prices (Figure 5).*

- Purchased dairy feed expense will likely increase 10 percent in 1994, which offsets the expected increase in milk prices. Compared to 1992, smaller 1993 Midwest corn and soybean crops pushed February prices up 40 percent and 20 percent, respectively. However, weak export demand has prevented even greater price increases to date. Prices will remain near current levels until more is known about this year's crop conditions in the Midwest. However, slim crop inventories coupled with news of another small crop would set the stage for even greater price run-ups this fall.
- Another modest increase (+3%) is expected for labor as job markets improve and dairy farm profitability remains uncertain. Benefits and mandatory deductions (i.e., Workers' Compensation) continue to drive increases in this category.
- Greater demand will fuel a 4 percent increase in fertilizer and lime expense in 1994. Zero flex acres, favorable commodity prices, and depleted soil nutrients in Midwest soils will drive up demand and therefore prices. Locking in prices early would be a prudent move for farmers. This will also affect chemical prices in 1994.
- Adequate world supplies of crude oil will hold prices for fuel and lubricant prices in 1994.

- Short-term interest rates are likely to creep up 25 to 50 basis points as the Federal Reserve has already pushed up the federal funds rate by 25 basis points (i.e., rates banks charge each other). Long-term rates will likely hover around current levels during the year. Interest rates have bottomed, placing more emphasis on upside risk.

- The mandatory assessment under the federal budget bill is expected to increase from 14 to 17 cents per cwt. in 1994. Undoubtedly dairy farmers filing for refunds during 1994 will increase the assessment again in 1995, the final year for the assessment under current law.

- Repairs and maintenance expense continue to fluctuate with cash flow availability. After declining 10 percent in 1993, discretionary spending on maintenance will increase marginally (2%) in 1994.

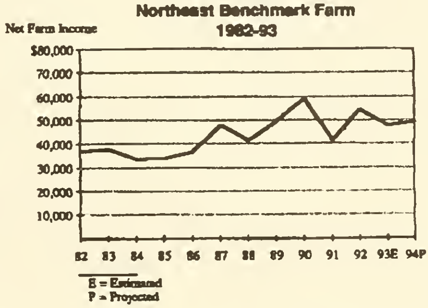
- Most evidence suggests that general inflation will remain around 3 percent. As a result, other expenses will likely fall within this range.

1994 will be another challenging year as dairy farmers make adjustments for rising input prices. Clearly, controlling costs deserves more attention this year than in the past several.

1994 cash flow marginally better than 1993 . . .

Applying these budgeting factors to the 1993 district benchmark results in a 12 percent decline in net farm income in 1993 (Figure 6). With slower gains in milk output per cow during 1993, Northeast dairy farmers increased cow numbers to improve cash flow.

Figure 6
Net Farm Income
Northeast Benchmark Farm
1982-93



Income gains from higher milk prices and milk production will be largely offset by increases in expenses. As a result, Net Farm Income is expected to rise marginally (4%) in 1994.

Those businesses who did well in 1993 should feel relatively well-positioned for the future. Those who struggled with 1993 conditions likely face more of the same going forward with substantial vulnerability to the next "*down*" year such as 1991. However, a stronger employment and real estate market should provide some farmers with more options than they had in 1991.

BST is now available to dairy farmers . . .

The impact of BST on dairy markets remains uncertain. To date, farmer reactions have varied dramatically and have been more notable than that of the general public. Unless handled carefully, this emotional issue could be detrimental to the industry's image of producing safe and pure products. For example, labeling products *"hormone free"* raises consumers' concerns over milk that is not labeled. The only certainty is that the Pure Food Campaign will try to keep this controversy alive.

Little accurate information is available on expected adoption of BST. Adoption is an individual decision, which can vary from no use, limited use on specific cows in a herd, to total use on the whole herd. Independent budgets show that BST can be profitable when starting from a base of good herd nutrition, health and breeding practices. BST is not a short cut for poor managers to improve their competitiveness.

The final word on BST is now in the hands of the marketplace . . . stay tuned!

Figure 7

Example BST Budget

Farm Milk Price ($/Cwt)	Break-Even Milk Production Response Per Day: 3¢ Per Lb Feed Per Day	Break-Even Milk Production Response Per Day: 4¢ Per Lb Feed Per Day
$14.00	3.9	4.3
13.50	4.1	4.5
13.00	4.3	4.8
12.50	4.5	5.1
12.00	4.8	5.4
11.50	5.1	5.7
11.00	5.4	6.1

SOURCE: Pennsylvania State University
Other expense per cow per day: Posilac™ 36¢, labor 2¢, other 5¢.

Based on the $13.66 milk price forecast for the district benchmark farm, BST use would need to increase production 4 pounds per day to break even. Actual changes in feed, labor and veterinary expenses will vary among farms. Changes in the break-even level are determined largely by milk and feed prices, and cost of injections. As milk price declines or feed price rises, the production response needed from BST to break even increases (Figure 7). However, a break-even response would not likely be acceptable to most dairy farmers. As a result, monitoring the actual response is key to evaluating returns from using BST.

The Northeast dairy industry has an enviable record of improving productivity and efficiency over the last 10 years. This allowed it to cope with farm milk prices that were averaging well below that of 10 years ago. The economic incentives and pressures which motivated this tremendous track record continued strong in 1993 and will prevail again in 1994. Regardless of new technologies, emphasizing the fundamentals of good dairy cow husbandry and farm business management will continue to be the key to success.

Cleave T. Snow
Business Research Analyst
February 25, 1994

EXHIBIT 3

The Commonwealth of Massachusetts

Department of Food and Agriculture

Leverett Saltonstall Building, Government Center

100 Cambridge Street, Boston 02202

CONNECTICUT COMMITTEE ON THE ENVIRONMENT
PUBLIC HEARING ON THE NORTHEAST INTERSTATE DAIRY COMPACT

March 12, 1993

I am Gregory Watson, Commissioner of the Massachusetts Department of Food and Agriculture. I appreciate the opportunity to offer this written testimony in support of Commissioner Jack Blum's efforts to secure the Connecticut Legislature's adoption the Northeast Interstate Dairy Compact language.

As you may know, in February 1992, acting under the powers granted to me by the Massachusetts General Court, I established a state-mandated premium that stabilized the price Massachusetts dairy farmers receive for their milk at $15.00 per hundredweight. My decision to take this action was based on both oral and written testimony gathered at a series of public hearings across the state that my department held to determine the overall economic status of the Commonwealth's dairy producers.

The picture presented by dairy farmers, farm equipment dealers, agricultural economists and other experts was grim. Their testimony revealed that the overall price for milk has steadily been declining over the last ten years. At the same time, the cost of production has continued to increase. In fact, virtually every aspect of production required to produce milk has significantly increased in cost since 1979 while the price farmers were receiving for their milk equalled the 1979 prices.

As a result of this set of circumstances, the number of dairy farms in Massachusetts decreased by half during the past decade -- from more than 800 to just over 400 today. It should be noted that during this time period, most Massachusetts farms actually increased their efficiency over the years, in some instances by as much as 20% or more. Thus the problems dairy producers are facing are not the result of inefficient operations or mismanagement as is often assumed. Rather, the problems stem from the federally-regulated pricing system that does not acknowledge regional differences associated with the cost of producing milk.

The Agricultural Agreement Act was established by Congress in 1937 in order to protect the dairy industry and ensure the survival of dairy farming. The Act provides for the creation of federal milk marketing orders. The orders create a complicated system for determining what price farmers will be paid for the milk they produce. The original intent being to stabilize prices to ensure a continuous supply of milk.

The key to this system is something called the M-W price. The M-W price is the average price paid by approximately 110 cheese, butter and powdered milk manufacturing plants for Grade B milk in the Minnesota-Wisconsin area. (Grade B Milk cannot be sold for fluid consumption. It can only be used for manufactured products).

These plants in the Minnesota-Wisconsin area pay a price for milk which is a total free market price. There is no regulatory system which determines what these plants must pay to the dairymen in these areas. Each month a survey is taken to determine the average that these plants pay for milk. That average becomes the M-W price -- in essence the basis upon which the price of milk virtually everywhere else in the U.S. is determined.

When there is a surplus of milk, the federal government (via its purchases) becomes the major factor in the milk market and the federal support price (the minimum price the government will pay dairy farmers for their [Class B] milk used to make manufactured dairy products) sets the M-W price. The huge factory farms in California and the Southwest are primarily responsible for creating these surpluses by using taxpayer-subsidized water to raise feed year-round and produce enormous quantities of cheap milk.

Recent events demonstrate that this system no longer accomplishes its goal nor provides a stable, minimum price for dairy farmers operating in New England and the northeast. The January, 1991 blend price for Federal Milk Order I was 27 percent less than the January, 1990 price. This represents the largest year-to-year change in the history of the New England Order. This precipitous drop in the federal market order price for milk is part of a decade-long trend of decreasing prices paid to farmers that poses an unprecedented threat to the viability of the region's dairy industry.

Although prices continued to fall, the cost of production rose, health standards became more stringent, and production equipment became outdated. Dairy farmers' cost of producing milk increased by $1.00/cwt. in 1989 to $13.95/cwt. This figure does not include a return on the $33.00/cwt. of the farmer's own equity invested in his or her business. Higher feed prices caused expenses to increase by $61.00 per cow or $.32/cwt. The average dairy farmer's interest expense increased $21.00 per cow in 1989.

There is no question that this pricing scheme -- unrelated as it is to the actual cost of production in this part of the country -- has wreaked havoc on dairy farms throughout New England. Today there are less than 430 dairy farms in Massachusetts, compared with 829 in 1980, 1,339 in 1970, and 3,133 in 1960. This pattern of decline has been mirrored throughout the region.

The loss of Massachusetts dairy farms ripples through the entire agricultural landscape. Dairy farming contributes more than $75 million to the state's economy, making it the third largest sector of the Commonwealth's agricultural economy. In addition, more than one-quarter of the 600,000 acres of active farmland in Massachusetts is occupied by dairy farms. When dairy farms are converted into housing developments and shopping malls, the impact is also felt by Massachusetts' number one industry --- tourism. It is hard to imagine that tourists would travel to the Berkshires if

the Holsteins and Jerseys were to vanish from the landscape.

Two years ago I felt that the most effective way to address the inherent inequities that exist within the federal milk pricing system would be to develop and undertake a two-part strategy. The primary objective would be to address the long term systemic problem, i.e. the federal milk order, by working with the other New England states on a regional interstate compact. At the same time we needed to find some means of providing our producers with immediate financial relief so that a significant number of Massachusetts dairy farmers would still be in business to take advantage of the compact when it came into being. Our interim strategy found its reality in the creation of the Massachusetts Pricing Order of 1992 -- our state-mandated premiums that guarantee Massachusetts farmers a $15.00 blend minimum price for their milk that I referred to earlier.

The need for a regional strategy to address the inherent inadequacies and inequities of the federal milk order is clear. Someone once remarked that had the United States been settled from the west coast to the east, New England would surely have been established as one state -- given our common biogeographical characteristics.

While it might appear that gaining support and passage of the Compact in Connecticut and Massachusetts -- the two New England states with the largest non-rural populations -- would be especially difficult, I do not see it that way. In fact, I am convinced that consumers have as much, if not more to gain from the establishment of the Interstate Dairy Compact than do the farmers of New England.

Consumers are the primary beneficiaries of a local source of fresh wholesome milk. Consumers also benefit if the price of that milk is stabilized and buffeted against the fluctuations that characteristically plague the federally-established M-W price. Consumers overwhelmingly supported the Massachusetts Pricing Order of 1992.

The Weld Administration's main objective with respect to addressing the dairy pricing crisis is to work towards the establishment of an interstate dairy compact. Governor Weld believes that such a regional strategy is the best way of achieving a long term and fair solution to the problems afflicting all dairy farmers in Massachusetts and throughout the Northeast.

The Massachusetts Legislative Joint Committee on Natural Resources and Agriculture will be conducting hearings similar to yours within the next few weeks to gather testimony from our farmers and consumers on the Interstate Dairy Compact. Our lawmakers will be watching what happens in Connecticut with great interest. This committee's support for the Compact in Connecticut would represent a courageous and historic step towards preserving a vital part of New England's heritage and economy.

Mr. BRYANT. Mr. James Erickson.

Mr. ERICKSON. Mr. Chairman, I would like to, before I start my testimony, introduce our counsel, Mr. John Vetne, who will assist me in answering questions.

Mr. VETNE. Chairman Bryant, my name is John Vetne. I am from Newburyport, MA.

For the last 20 years, my law practice has specialized in Federal and State milk pricing regulation and legislation. For the past 10 years, that practice has been in New Hampshire and Massachusetts. Although my practice has been national, that is where I made my home and kept my office.

If the committee has questions concerning the interplay of Federal and State pricing regulation, how they work, what the data is and where the raw data comes from, I will be glad to answer those questions. Thank you.

Mr. BRYANT. Very well.

STATEMENT OF JAMES W. ERICKSON, INTERNATIONAL DAIRY FOODS ASSOCIATION, PRESIDENT AND CEO, ANDERSON ERICKSON DAIRY CO., ON BEHALF OF THE MILK INDUSTRY FOUNDATION, THE NATIONAL CHEESE INSTITUTE, AND THE INTERNATIONAL ICE CREAM ASSOCIATION, ACCOMPANIED BY JOHN H. VETNE, ATTORNEY AT LAW

Mr. ERICKSON. Mr. Chairman, thank you for this opportunity to testify. I am president and CEO of Anderson Erickson Dairy Co., a Des Moines, IA, based business which has been in operation since it was founded by my father in 1930. Today we own and operate three dairy processing plants in Iowa which produce fluid milk products, ice cream and frozen dessert mixes.

I am appearing today on behalf of the Milk Industry Foundation, which is the national trade association for processors and distributors of fluid milk and milk products. MIF's member companies operate about 400 plants nationwide and process nearly 80 percent of the fluid milk products and about 90 percent of the yogurt, sour cream and cottage cheese consumed in the United States.

I am also appearing on behalf of the organizations of the International Dairy Foods Association for whom I serve as a member of the board of directors. The IDFA is composed of three constituent organizations: the Milk Industry Foundation, the National Cheese Institute, and the International Ice Cream Association.

Last year, Anderson Erickson purchased a total of 389 million pounds of milk from farmers. After processing this milk at our plants, our products were sold in five States: Iowa, Nebraska, Missouri, Kansas, and Illinois. Anderson Erickson, the MIF and other IDFA organizations oppose granting congressional consent to a compact as proposed in the northeast because it sets a dangerous precedent for a regional rather than national system for pricing milk. The impact of this legislation reaches far beyond the six compact States. The compact limits competition between States, impacts prices paid by milk drinkers, disrupts the existing Federal program and adds to the Government's cost.

The proposed Northeast Dairy Compacts seeks, for the first time in U.S. history, congressional blessing and approval for the estab-

lishment of a customs duty or tariff for products entering a select group of States from other States in the Union.

Less than 2 months ago, the U.S. Supreme Court struck down a Massachusetts milk price regulation as unconstitutional because it attempted to set a similar tariff for a single State. The importance of this U.S. Supreme Court decision to the Northeast Dairy Compact debate is emphasized in the joint letter by Senators Kohl and Grassley to the members of the Senate Judiciary Committee that is—this is attached to my written statement.

Over the years, the Secretary of Agriculture has established a carefully coordinated system of milk pricing which recognizes the competitive interdependence of various milk producing and consuming areas. In an extensive review of the Federal order pricing and policy issues, the Secretary decided last year not to adopt a substantial fluid milk price increase. The Secretary concluded that New England and other markets are adequately supplied with milk under the current Federal pricing levels.

The proposed Northeast Compact seeks to supplant uniform Federal milk pricing policy with unduly enhanced regional milk prices not attainable through the USDA hearing process or by negotiating in the competitive marketplace.

The proposed Northeast Dairy Compact should be rejected by Congress because it is bad economic policy and bad dairy policy. It is not simply an isolated solution to unique problems in a local dairy economy. Instead, it would be the first step towards the balkanization of a national dairy economy which has evolved over the past half century.

Similar compacts to protect parochial agricultural interests would undoubtedly be promoted for all other regions. If protectionist authority is permitted for milk, why shouldn't similar protection of local interests be provided against low-cost chickens from the southwest, wine from California, fossil fuels from Texas, tomatoes from Florida, potatoes from Idaho, peaches from Georgia or apples from Washington?

While the dairy compact seeks to stimulate or maintain current milk production in New England, it would directly conflict with efforts to curb oversupply of milk. The Commodity Credit Corp. has purchased over 59 million pounds of surplus powdered milk and 46 million pounds of surplus butter in the past 3 months under the price support program because national milk production exceeds commercial demand.

Milk price enhancement in New England, as is compact proponents' objective, will invariably encourage milk production. This will take away existing markets from outside dairy farmers and force more milk both inside and outside of New England into surplus commodities, depressing prices elsewhere for all dairy farmers.

The IDFA organizations strongly urge Congress to leave the business of interstate regulation of milk prices exclusively in the hands of the U.S. Department of Agriculture where it belongs and deny its consent to the Northeast Dairy Compact.

This concludes my statement. We would both be willing to answer any questions.

Mr. BRYANT. Very well.

[The prepared statement of Mr. Erickson follows:]

International Dairy Foods Association
Milk Industry Foundation
National Cheese Institute
International Ice Cream Association

INTERNATIONAL DAIRY FOODS ASSOCIATION

TESTIMONY BEFORE THE HOUSE JUDICIARY COMMITTEE
SUBCOMMITTEE ON ADMINISTRATIVE LAW AND
GOVERNMENTAL RELATIONS
AUGUST 3, 1994

PRESENTED BY:

MR. JIM ERICKSON, PRESIDENT AND CEO
ANDERSON ERICKSON DAIRY COMPANY
DES MOINES, IA

ACCOMPANIED BY MR. JOHN VETNE, COUNSEL
BLODGETT, MAKECHNIE & VETNE
NEWBURY, MA

ON BEHALF OF THE MILK INDUSTRY FOUNDATION,
THE NATIONAL CHEESE INSTITUTE, AND
THE INTERNATIONAL ICE CREAM ASSOCIATION

1250 H St., NW, Suite 900, Washington, DC 20005 202•737•4332 FAX 202•331•7820

BEFORE THE JUDICIARY COMMITTEE OF THE UNITED STATES HOUSE OF REPRESENTATIVES

STATEMENT ON BEHALF OF MILK INDUSTRY FOUNDATION, INTERNATIONAL DAIRY FOODS ASSOCIATION ON THE NORTHEAST DAIRY COMPACT

My name is Jim Erickson. I am the President and CEO of Anderson Erickson Dairy Company, a Des Moines-based business which has been in operation for 64 years, since it was founded by my father in 1930. Today we own and operate three dairy processing plants in Iowa which produce fluid milk products, ice cream, and frozen dessert mixes.

Anderson Erickson is a member of the Milk Industry Foundation ("MIF"), on whose behalf I am appearing today. The Milk Industry Foundation is the national trade association for processors and distributors of fluid milk and milk products, including beverage milks, cream, yogurt, cottage cheese, sour cream, soft cheese and dairy-based dips. MIF's member companies operate about 400 plants nationwide and process nearly 80 percent of the fluid milk products and about 90 percent of the yogurt, sour cream and cottage cheese consumed in the United States. I am also appearing on behalf of the organizations of the International Dairy Foods Association of which I serve as a member of the Board of Directors. The IDFA is composed of three constituent organizations: the Milk Industry Foundation, the National Cheese Institute ("NCI") and the International Ice Cream Association ("IICA"). NCI has 140 member companies that manufacture 85 percent of the cheese consumed nationwide. IICA has 175 member companies that manufacture and distribute an estimated 85 percent of the ice cream and ice cream related products consumed in the United States.

Last year, Anderson Erickson purchased a total of 389 million pounds of milk from farmers. After processing this milk at our plants, our products were sold in five states--Iowa, Nebraska, Missouri, Kansas and Illinois. Anderson Erickson, the MIF and other IDFA organizations opposes granting Congressional consent to a Compact as proposed

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in the Northeast because it sets a dangerous precedent for a regional, rather than national, system for pricing milk. The impact of this legislation reaches far beyond the six Compact states. The Compact limits competition between states, impacts prices paid by milk drinkers, disrupts the existing federal program and adds to the government's costs.

The proposed Northeast Dairy Compact seeks, for the first time in U.S. history, Congressional blessing and approval for the establishment of a customs duty or tariff for products entering a select group of states from other states in the Union. It is the authority to establish and enforce such tariffs, called "compensatory payments" in Section 10(6) of the Compact, which lies at the heart of the quest for Congressional approval of the Compact. States may regulate milk prices in intrastate transactions without Congressional approval, but effective enhancement of milk prices above the limits of competitive constraint requires tariff authority. Proponent's request for approval of regional economic protectionism is unlike any interstate compact previously submitted to, or approved by Congress. Other compacts involve issues such as boundary line disputes, protection of natural resources, and common public service or public safety projects. The tariff authority is the real issue before Congress.

Time after time individual states have sought to insulate and protect local dairy interests by establishing direct or indirect protective tariffs on milk and milk products. Striking down one such effort in the Northeast almost 50 years ago, the Supreme Court said:

> "Our system, fostered by the Commerce Clause, is that every farmer and every craftsman shall be encouraged access to every market in the Nation, that no home embargoes will withhold his exports, and no foreign state will by customs, duties or regulations exclude them. Likewise, every consumer may look to the free competition from every producing area in the Nation to protect him from exploitation by any. Such was the vision of the Founders; such has been the doctrine of this Court which has given it reality." H.P. Hood & Sons, Inc. v. DuMond, 336 U.S. 525, 539 (1949).

Less than two months ago, the Supreme Court again, in West Lynn Creamery v. Healey, struck down a Massachusetts milk price regulation as "unconstitutional because it, like a tariff, 'neutralize(s) advantages belonging to the place of origin'". A Minnesota law, patterned after and encouraged by the Massachusetts program, had earlier been struck down by a federal court. The Constitutionality offensive Massachusetts price rule is similar, in many respects, to the pricing scheme envisioned under the Compact for New England as a whole. The State of Vermont argued in a Supreme Court Brief that the Massachusetts pricing scheme was "pure economic protectionism that burdens interstate commerce by interfering with competition . . .," and was inconsistent with the "policy of federalism that binds this nation as an economic unit and prevents one state from prospering at the expense of its neighbors . . ." The importance of the West Lynn decision to the Northeast Dairy Compact debate is emphasized in the attached joint letter by Senators Kohl and Grassley to the members of the Senate Judiciary Committee (Attachment A).

There currently exists a Federal Milk Marketing Order Program which establishes minimum milk prices per hundredweight (11.6 gallons) which must be paid to dairy farmers in most regions of the country, including New England. In most parts of the country, including New England, dairy farmers are able to negotiate prices above the federally-regulated minimum. The Secretary of Agriculture is guided by statutory pricing standards intended to "insure a sufficient quantity of pure and wholesome milk to meet current needs and . . . anticipated future needs" for each market. 7 U.S.C. §608c(18). Over the years, the Secretary of Agriculture has established a carefully coordinated system of milk pricing which recognizes the competitive interdependence of various milk producing and consuming areas. In a most extensive review of Federal Order pricing and policy issues, the Secretary decided last year not to adopt a substantial fluid milk price increase, such as some farm groups had proposed for New England. The Secretary concluded that New England, and other markets, are adequately supplied with pure and wholesome milk under the current federal pricing levels. The proposed Northeast

Compact, in essence, seeks to supplant uniform federal milk pricing policy with unduly enhanced regional milk prices not attainable through the USDA hearing process or by negotiation in the competitive marketplace.

Compact proponents have given lip-service support to continued Federal Milk Order regulation if Compact authority is adopted, but federal regulation would become largely irrelevant if a Compact Commission commenced price regulation. Further, unlike many federal program, the Milk Order Program is dependent upon initial and continued approval of dairy farmers, who program beneficiaries. Under federal law, 7 U.S.C. §608C(16), the Secretary must terminate federal regulation if requested to do so by a majority of producers. Compact authority would provide powerful incentive for producers to terminate the New England Federal Order, thereby, losing the protection it affords to the industry.

The proposed Northeast Dairy Compact should be rejected by the Congress of the United States because it is bad economic policy and bad dairy policy. It is not simply an isolated solution to unique problems in a local dairy economy. Rather, it would be the first step toward the balkanization of a national dairy economy which has evolved over the past half-century.

The Compact, by its terms (Section 20), could spread across the country to any number of contiguous states which are eligible to participate. Similar compacts to protect parochial agricultural interests would undoubtedly be promoted for other regions, as specifically espoused in February 1994 policy statement of the National Association of State Departments of Agriculture supporting the proposed Northeast Dairy Compact. If protectionist authority is permitted for milk, why shouldn't similar protection of local interests be provided against low cost chickens from the Southeast, wine from California, fossil fuels from Texas, tomatoes from Florida, potatoes from Idaho, peaches from Georgia, or apples from Washington?

Proponents assert that a decline in New England dairy farm numbers supports establishment of a regional compact, but reduction in dairy farm numbers is a national phenomenon as dairy farms become fewer, but larger, enabling individual farms to produce milk more efficiently. In 1982, 6,923 dairy farmers delivered 5.5 billion pounds of milk to the Federal New England market. Ten years later, the same volume of milk was delivered by 4,686 producers. New England's largest milk producing state, Vermont, has experienced a slower rate of decline in dairy farm numbers than the nation as whole. In 1993 there were 45% fewer dairy farms in the nation than in 1983, but for Vermont the reduction was 34% over the same period.

Proponents argue that milk supplies for New England are threatened without a compact, but less than half of the supply marketed to New England handlers is needed for bottling purposes. Perhaps a greater threat to New England farm revenues is surplus milk production. In May 1994, 66 million pounds of New England market milk was used to make nonfat dry milk ("NFDM") -- a use of last resort and lowest value. Such NFDM use returned only $10.12 per hundredweight to New England dairy farmers in contrast to reported negotiated prices of up to $16.49 for Boston bottled milk use, and not less than $12.93 for ice cream use, or $11.39 for milk used to produce cheese.

While the Dairy Compact seeks to stimulate or maintain current milk production in New England, it would directly conflict with efforts to curb oversupply of milk. In 1993 the Commodity Credit Corporation ("CCC") refunded almost $2.5 million to New England dairy farmers who stabilized or reduced milk production under a program designed to discourage production growth. Notwithstanding such efforts, the CCC has purchased over 59 million pounds of NFDM and 46 million pounds of butter in the past three months under the Price Support Program because national milk production exceeds commercial demand.

Proponents imply that it is essential to have a nearby and local supply of raw milk to serve consumer needs. This may have been true in the 1940s, but transportation

technology in the 1990s has expanded markets beyond limits of the 1940s. Over-the-road tanker trucks permit raw milk to move hundreds of miles from farm to bottling plant; and New England consumers receive regular milk supplies from Western New York, as well as Northern Vermont. New England consumers should not be denied the opportunity to purchase milk from the most efficient production regions; and bottlers or dairy farmers outside of New England should not be required to pay a tribute to market their products in the region.

Compact proponents may cite to high costs of milk production for New England farms, and even to conclusions by some that most producers are not recovering costs. However, a Farm Credit Bank of Springfield (Massachusetts) reported that net farm income averaged $2.26 per hundredweight in 1993 to Northeast dairy farmers. The same publication revealed net farm income of $2.83 per hundredweight to northern New England milk producers and $2.14 to southern New England dairy farms. Before drawing production cost conclusions, the Committee should also be aware that such costs are highly variable from farm to farm, and dairy economists differ as to how production costs should be calculated and reported. Production cost experts in USDA's Economic Research Service may be available to assist the Committee on these issues.

Compact proponents have painted an image of a typical New England dairy farmer whose assets are overburdened by liabilities. But the recent report by the Farm Credit Bank of Springfield revealed that, in 1993, the average New England dairy farmer had assets of about $1.1 million and net worth over $822,000. Total liabilities represent only 23% of total assets.

Milk price enhancement in New England, as is Compact proponents' objective, will invariably encourage milk production. This will take away existing markets from outside dairy farmers and force more milk both inside and outside of New England into surplus commodities, depressing prices elsewhere for all dairy farmers.

The Milk Industry Foundation strongly urges Congress to leave the business of interstate regulation of milk prices exclusively in the hands of the United States Department of Agriculture, where it belongs, and deny its consent to the Northeast Interstate Dairy Compact.

ATTACHMENT A

JOSEPH R. BIDEN, JR., DELAWARE, CHAIRMAN

EDWARD M. KENNEDY, MASSACHUSETTS
HOWARD M. METZENBAUM, OHIO
DENNIS DECONCINI, ARIZONA
PATRICK J. LEAHY, VERMONT
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ALAN K. SIMPSON, WYOMING
CHARLES E. GRASSLEY, IOWA
ARLEN SPECTER, PENNSYLVANIA
HANK BROWN, COLORADO
WILLIAM S. COHEN, MAINE
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CYNTHIA C. HOGAN, CHIEF COUNSEL
CATHERINE M. RUSSELL, STAFF DIRECTOR
MARK R. DISLER, MINORITY STAFF DIRECTOR
SHARON PROST, MINORITY CHIEF COUNSEL

United States Senate

COMMITTEE ON THE JUDICIARY
WASHINGTON, DC 20510-6275

June 21, 1994

Dear Senate Judiciary Committee Member:

A recent development confirms the unprecedented and extremely harmful impacts that would result from Congressional approval of the proposed Northeast Interstate Dairy Compact (S.2069). On June 17th, the Supreme Court declared unconstitutional a Massachusetts Pricing Order that required a "tax" to be paid to Massachusetts dairy farmers on all milk brought into Massachusetts from other States. West Lynn Creamery, Inc. v. Healy No. 93-141 (June 17, 1994) (copy attached). The Northeast Compact would have the same impact as that Massachusetts Pricing Order, except it would spread its ill-effects throughout an entire region rather than a single state.

The Supreme Court analogizes the Pricing Order to a "protective tariff or customs duty," which "violates the principle of the unitary national market by handicapping out-of-state competitors, thus artificially encouraging in-state production even when the same goods could be produced at lower cost in other States." The Northeast Compact has exactly this effect -- it places a "tax" on milk brought into the Compact States from out of state (whether packaged or in bulk form), in the form of "compensatory payments," thereby penalizing all farmers located in the 44 non-Compact states who are able and willing to produce and sell milk at a lower cost than the artificial price established by the Compact members, without any federal oversight or control.

There is no precedent for this kind of Interstate Compact. Congress has never approved a Compact under which the Compact member states were permitted to wall themselves off into a separate economic price-fixing unit, or to dictate the terms at which interstate transactions with non-Compact members could occur. Existing Compacts deal with such matters as transportation, bridges, water control, and boundary lines; they do not give to Compact members the right to engage in economic Balkanization.

If the Northeast Compact is approved, others will likely follow. Whether it will be chicken producers in the mid-Atlantic seeking to exclude chickens from the Southeast (or vice versa), or cotton producers in one region trying to exclude cotton producers in another region, the prospects for economic chaos are real. The

"fantastic rivalries and dislocations and reprisals [that] would ensue" if states were permitted to "decree that industries located [there] shall have priority' has long been recognized. See Hood & Sons, Inc v. DuMond, 366 U.S. 525, 539 (1949).

The proponents of the Compact will argue that the Massachusetts Pricing Order Supreme Court case is irrelevant because it is a Commerce Clause ruling, and approval of the Northeast Compact by the Congress would bypass the Commerce Clause. But we believe that the cautions raised by the Supreme Court regarding regional economic protectionism remain completely relevant to the economic barriers proposed by the Northeast Compact.

We urge you to review the Supreme Court decision carefully before the Judiciary Committee considers S. 2069. The U.S. Supreme Court clearly sees the negative implications of attempting to insulate local industries from our system of interstate commerce and free markets. We hope you will agree and reject this dangerous precedent. If one such Compact is approved, we will be overwhelmed by them in future.

Sincerely,

Herb Kohl

Herb Kohl, U.S.S.

Chuck Grassley

Charles E. Grassley, U.S.S.

Mr. BRYANT. Mr. English, Southern Food Group.

STATEMENT OF CHARLES M. ENGLISH, JR., COUNSEL, SOUTHERN FOOD GROUP, INC.

Mr. ENGLISH. I am appearing today as counsel to the Southern Foods Group, a Dallas-based dairy processing company which owns and operates six fluid processing plants throughout Texas and Louisiana.

SFG and its predecessors have been in business for more than 50 years. SFG employs more than 1,800 employees, 1,600 in Texas, and processes more than 10 million gallons of fluid milk each month. Most of that milk is produced by Texas dairy farmers.

Milk has become a national product, and the dairy industry is a national industry. As a result, SFG opposes the bill H.R. 4560. The interstate compact would set up a tariff barrier at the border of New England, and section 10(6) makes that abundantly clear that there is going to be a compensatory payment and that payment is not going to induce the processor to move the milk into New England. It will end up preventing that milk from moving into New England.

The express purpose, then, is to enhance prices paid to the New England farmers. That is exactly what they said it is going to do.

This effort by New England dairy farmers is not unique, and it is not new. For 150 years you can read case law going back about the dairy farmers going out of business in Massachusetts and New England. Individual States such as Massachusetts have attempted for that entire time period, until this year—even up to this year—to adopt programs individually for their States. As Mr. Erickson mentioned, the Supreme Court overturned that as being unconstitutional.

Indeed, my own firm has been involved in the dairy industry for 30 years now, and one of those efforts was back in the early 1960's on behalf of farmers nearby to Boston who wanted to obtain more money so that they could stay in business. The court held—and in that case the Supreme Court held that it was not entitled, that the law did not permit that nearby differential to allow dairy farmers to stay in business close to Boston.

Justice Stevens in the opinion earlier this year made a statement that was very instructive about this bill: "If we are to accept these arguments" that is, the arguments about the cost of production in New England and going out of business "we would make a virtue of the vice that the rule against discrimination condemns. Preservation of local industry by protecting it from the rigors of interstate competition is the hallmark of the economic protectionism that the commerce clause condemns."

As economies of scale have developed in the dairy industry, more and more milk production in this country has moved, indeed, to the southwest. And while we sympathize with the concerns of dairy farmers in the Northeast who claim that they can no longer make a good living in dairy farming, we find their claims difficult to believe in light of the economic data reported by the Department of Agriculture and the Farm Credit Bank.

Frankly, dairy farmers in New England are making money. The Farm Credit Bank data that are relied on for showing that farmers

are not making money in New England includes income taxes and cost of living expenses. That is the kind of data that is included to come to the conclusion that there is little or no money being made by dairy farmers in New England.

In answer to your question, Mr. Chairman, we are losing dairy farmers in Texas. Family farms are going out of business throughout this country. Now, Texas has gained in production. The reason for that is economies of scale, large-scale dairy farms in Texas and in other parts of the country, certainly in California.

But it is not true that New England is alone. Minnesota and Wisconsin are losing dairy farmers at a far faster pace. Indeed, Wisconsin now is no longer the dairy State. California produces more milk than Wisconsin.

The centerpiece of the proposed interstate compact is the right to establish higher prices for milk used in bottling operations. That is the consumers' milk in the carton at the grocery store. But we are already swimming in surplus milk in this country. USDA has not found any need to increase prices in New England, and, indeed, there was a hearing just 4 years ago. And the conclusion, as a result of that hearing after New England farmers asked for additional money for their product in fluid, was that there was no need for additional milk in New England.

The industry has become very alarmed with another situation, and that is per capita milk consumption is dropping. Consumers are increasingly choosing alternative nondairy products. We are so alarmed that we have come to Congress, and we now have assessments both on producers and on processors to pay for promotion and consumer education funds, both designed to increase consumption of milk.

Why should consumers be asked to pay more in the abstract for a product which is in abundant, if not in excess, supply already? But that is not what is going to happen. It is not going to be in the abstract, and it is not going to be a couple cents.

If you read the bill and if you look at the provisions, the fact is the authority to the compact would be to permit up to a $1.50 increase per gallon of milk. So why should the industry that is making efforts to increase consumption do something that will only result in decreased consumption? There is simply no economic sense to this compact.

We are vitally concerned about the impact the Northeast Interstate Dairy Compact would have on the entire Federal regulatory program. We are also concerned about the precedent that it sets for other industries.

Congressman Reed mentioned the issue about energy. Why not next have a New England energy compact that would set up at its barrier a tariff?

Mr. Chairman, I see my time has expired. I have just about 30 more seconds.

Mr. BRYANT. Go ahead.

Mr. ENGLISH. The Federal milk order system is complex and should be allowed to continue.

As a Texas-based company, Southern Food Group's first concern is to the Texas industry. We have seen significant growth in dairy

farming, but we believe that is a result of the sound economic principles through economies of scale.

The dairy industry in Texas is inextricably tied to New England and Wisconsin. There is what is called the formula basic price paid to all producers which is based upon the milk used in the upper Midwest. But yet there is more cheese coming out of Vermont. That is going to depress the cheese price. That is going to depress the basic formula price. That is going to depress the price of milk paid to all dairy farmers throughout the United States.

Texas dairy farmers will suffer if this bill is passed, and we urge rejection of it. Thank you.

Mr. BRYANT. Thank you very much.

[The prepared statement of Mr. English follows:]

IN OPPOSITION TO H. 4560
AUGUST 3, 1994
COMMITTEE ON THE JUDICIARY
SUBCOMMITTEE ON ADMINISTRATIVE LAW AND GOVERNMENTAL RELATIONS

Chairman Bryant and Congressmen:

My name is Charles M. English, Jr. and I am appearing today as counsel to the Southern Foods Group, Inc. ("SFG") a Dallas based dairy processing company which owns and operates 6 fluid processing plants throughout Texas and Louisiana (2 plants in Dallas and one each in San Antonio, Houston, Shreveport and New Orleans). SFG and its predecessors have been in business for over 50 years. SFG employs more than 1,800 employees (1,600 in Texas) and processes more than 10,000,000 gallons of fluid milk each month. Most of that milk is produced by Texas dairy farmers. I have worked with SFG and its predecessors for the past 10 years.

SFG is appearing before you today in opposition to H. 4560 which would permit New England to establish an Interstate Dairy Compact for the Northeast. The Interstate Compact would set up a tariff barrier at the border of New England, the express purpose being to enhance prices paid to New England dairy farmers and protect the local New England Dairy industry.

This effort by New England dairy farmers is not unique; individual states such as Massachusetts have attempted until this

year to adopt similar programs for their local dairy farmers. The United States Supreme Court has recently found those programs unconstitutional, if not simply economically unsound. Justice Stevens' opinion rejecting Massachusetts' arguments in that case is instructive here: "If we were to accept these arguments, we would make a virtue of the vice that the rule against discrimination condemns. Preservation of local industry by protecting it from the rigors of interstate competition is the hallmark of the economic protectionism that the Commerce Clause condemns."

As economies of scale have developed in the dairy industry, more and more milk production in this country is now coming from the southwest, and while we sympathize with the concerns of dairy farmers in the Northeast who claim that they can no longer make a good living in dairy farming, we find their claims difficult to believe in light of the economic data reported by USDA and the Farm Credit Bank.

The centerpiece of the proposed Interstate Compact is the right to establish higher prices for milk used in bottling operations -- the consumers' milk in the carton at the grocery store. But we are already swimming in surplus milk in this country. USDA has not found any need to increase prices in New England in order to bring forth an adequate supply of milk, even though New England asked for that very result just 4 years ago.

Indeed milk per capita milk consumption is falling, with consumers increasingly choosing alternative non-dairy products. The industry has become so alarmed with this drop in consumption that both dairy farmers and now processors make statutorily mandated contributions to promotion and consumer education funds, both designed to increase consumer consumption of milk. Why should consumers be asked to pay more for a product which is in abundant, if not excess, supply already? Why should an industry making efforts to stave off decreased consumption, at the same time be promoting an increase in the price for milk? There is no economic sense that can be made of this Compact.

Moreover, we are vitally concerned about the impact the Northeast Interstate Dairy Compact would have on the entire federal regulatory program for the dairy industry. Finally, the precedent set by the proposed Compact is dangerous to all. Why stop with New England and why stop with dairy products. Why not establish trade barriers to protect local producers of other products, produced in Texas or California, or Kansas, or elsewhere.

Therefore I concur with the remarks made by Mr. Erickson on behalf of the International Dairy Foods Association, but permit me one moment to go beyond those remarks. The federal milk order system is a complex regulatory program modified and refined by administrative rulemaking for almost 60 years. From its inception

that system was local, then it became larger and each area covered by the system became larger geographically. Today milk can and does move great distances in raw and packaged form from New Mexico to Wisconsin and from Minnesota to Florida. The federal pricing system, developed after so many years, should not be so quickly set aside in favor of local interests.

As a Texas based company, SFG's first concern is with the Texas dairy industry, but our comments apply to all other geographic areas as well. Texas has seen some significant growth in dairy farming over the past decade, again we believe as a result of sound economic principles articulated through federal rulemaking with respect to efficiencies of farm and business operations. The dairy industry in Texas is inextricably linked to the industry in New England and the upper midwest because the basic formula price paid for all milk in the federal system is based upon the unregulated price that can be received by dairy farmers in the upper midwest for milk used to produce cheese. If New England produces excess milk, the price of milk used to produce cheese will drop; the basic formula price will drop; and the prices of all milk products tied to the basic formula price will drop. Texas dairy farmers from whom we buy our milk will suffer if this bill is passed. We urge rejection of this bill.

Perhaps Justice Cardozo summarized this issue best in yet another Supreme Court rejection of an earlier northeastern effort to protect its local dairy farmers from interstate competition: "To give entrance to that excuse would be to invite a speedy end of our national solidarity. The Constitution was framed under the dominion of a political philosophy less parochial in range. It was framed upon the theory that the peoples of the several states must sink or swim together, and that in the long run prosperity and salvation are in union and not division."

I thank you for your time and attention to this matter and for permitting me to testify.

Mr. BRYANT. Mr. Smith, executive director of the Northeast Interstate Dairy Compact committee.

STATEMENT OF DANIEL SMITH, EXECUTIVE DIRECTOR, NORTHEAST INTERSTATE DAIRY COMPACT COMMITTEE

Mr. SMITH. Thank you, Mr. Chairman.

I think that, as Congresswoman Johnson said, the dairy compact is about consensus. And, somehow, a high degree of adversarialness has somehow crept into the process, which I think is very unfortunate.

I think we have come down specifically on the issue of whether the compact could create a tariff, so I think the dispute centers on that one specific feature of the compact, and I would like to address that in detail.

But I would just like to back up for 1 second to the previous witness' statement that dairy farmers in New England are making money and just reemphasize the problem that New England has dealt with for 6 years in trying to do this compact.

In Vermont, 120 farms went out of business between January 1 and August of this year, which represents about 5 percent of our industry. So I am a little perplexed as to the contention that somehow the New England region is making money. It just isn't. Nearly half the farmers in a recent study were shown to have a negative cash flow.

Our industry is in crisis, and this compact attempts to address a crisis. It is not some attempt to subsidize an industry to make it within the context of the case law that the witnesses are describing. This is an effort to restore the ability of States to regulate milk prices to deal with an industry that is in crisis.

Mr. Chairman, your concern, and I think it is a fair concern, is whether the compact is going to—it would establish a tariff and be protectionist. I think the issue reduces to whether New England is trying to establish a protectionist venture, and there really is no intent to do that.

The witness mentioned section 10(6) of the compact which does speak to compensatory payments, but that is not the primary way that the compact would be administered. As the congressional panel spoke to you, the basic gist of this compact is to preserve the milk shed, not New England dairy farmers. Roughly 30 percent of the milk at this time in the New England order, Federal order comes in from New York, and under the compact, that 30 percent of the milk supply will be provided the benefit of any increased price.

So there isn't any attempt here to take the proceeds of this compact and pay it to New England farmers at the expense of outside farmers. That is just not the design.

Now, I must say, as the drafter of the compact—a codrafter of the compact—if that is not clear in the text then let's clarify it. Let's spell out, let's make clear that what we are trying to do is set up a pooling mechanism that is patterned on the Federal order that would provide the benefits of this compact to the farmers who provide the milk. That is what we are trying to do.

So if your farmers from Texas ship their milk into New England, they would be part of the pool. That is our purpose.

There isn't any intent, and I don't believe that the language sets up a tariff. I think that we are seeing a controversy here that doesn't exist. But if it is necessary to clarify the language, let's do it, because the proponents of the compact are not trying to do what the opponents of the compact are claiming that we are trying to do. So I think we can get back to consensus by clarifying the language, if that is necessary.

I would suggest to you that the Senate went a long way in doing that in the amendments. I would speak to one of your—along the lines to some of your questions, Mr. Chairman.

The third amendment that the Senate Judiciary Committee put on the bill spells out that partially regulated plants, which would be a plant located outside the compact region—so in this theoretical example where milk from Texas might come into New England, if you had a plant in Texas or if the plant of the other witness here in, I believe, Iowa—and I hope I am not misrepresenting him.

But if you had a plant outside the region with farmers shipping to that plant, selling milk into the region, which I think is the issue we are all concerned about, according to the Senate amendment the farmers who ship to that plant will be part of the pool in the same terms as the farmers in New England.

So what is going on, in reality, is in New York. There are a few plants in New York shipping milk into New England. Those plants are part of the pool.

So if we need to spell that out more than what the Senate has done, we can do that. Otherwise, I think the problem can be cured by incorporating the Senate amendment into the bill, and your counsel has a copy of that amendment.

So I really think that, through language, we can get at this issue, and there really isn't a disagreement as to the purpose here. I think there is a disagreement that I do need to address.

If I might just take a few more seconds here, Mr. Chairman.

Mr. BRYANT. Go ahead.

Mr. SMITH. You mentioned a concern that the compact is drafted in a way that would let all of the States into it, and that is the original text of the bill.

However, the Senate also put in an amendment which my organization supports that would limit the compact to just the six New England States, and no other State could get into the compact without further congressional approval. So I believe that would address your concern on that issue.

If I could just take one more minute to address the issue of the court case that was mentioned.

I think that there is a discrepancy between the legal issue that that case provided as opposed to the political issue. I think the legal issue is whether the States can regulate milk, and the answer is clearly no, according to the West Lynn case.

But we are not trying to do that. We are coming to Congress to seek approval from Congress to regulate the milk, and that takes you back to the political question. So I would suggest to you that you keep this in the context of a political issue as opposed to a legal issue, which I think is the characterization that is being made.

[The prepared statement of Mr. Smith follows:]

Testimony of Daniel Smith

Mr. Chairman, members of the Subcommittee. Thank you for the opportunity to appear before you this morning to testify in favor of H.R.4560, the Northeast Interstate Dairy Compact.

My name is Daniel Smith. I am the Executive Director of the Northeast Interstate Dairy Compact Committee, which for the past two years has overseen the interstate and Congressional effort to establish the Compact. The Committee is comprised of the six New England commissioners of agriculture, the two original state sponsors of the legislation and four dairy farm leaders from the region. I have been involved with the Compact effort since its inception in 1988, first as Counsel to the Vermont House and Senate Agriculture Committees and now as the Compact Committee's Executive Director.

The compact text before you has been adopted by overwhelming, bi-partisan majorities in each of the six New England state legislatures. Reflecting its character as a true compact, the Legislature of Rhode Island, having only thirty-three dairy farms remaining and over 1 million people, approved the same text as the Legislature of Vermont, which has over 2,000 farms but only just over half a million people.

The Compact has also the bi-partisan, collective support of the six New England Governors, as set forth in their formal, joint resolution and letters of support attached to my testimony.

Pursuant to Article I, Section 10, Clause 3 of the Constitution, these states have now placed the Compact before Congress, and this House Judiciary Subcommittee, for approval. Identical Compact language in the form of S.2069 is currently before the full Senate, having been passed favorably out of the Senate Judiciary Committee.

As required, Counsel to the Subcommittee has received certified copies of the Compact legislation adopted by each state.

The congressional review process, and today's hearing, culminates a better than six-year effort to establish the Compact. Prompted by a precipitous decline in dairy farm prices in the fall of 1987, the Compact was initially conceived as a constitutionally authorized means to address by regulation the chronic problem of unstable and inadequate dairy farm prices in New England. This persistent, structural problem has for many years relentlessly forced family farmers out of the business of dairy farming.

In many of the New England states, the industry is perched on the brink of extinction. Congressman Olver and Commissioner Blum have eloquently described for you the catastrophic consequences

for the rural economies in their states caused by the decimation of New England dairy farms.

In view of their testimony, and because the Congress has constantly struggled with this well-known issue on a national scale, I will not describe at length the problem addressed by the Compact. I would add only that, collectively, during the 1980s, New England lost 40 percent of its dairy farms. Of the 8,395 dairy farms in operation in 1980, 3,352 were out of business by 1990.[1] The erosion continues to this day.

Rather than focus on the problem, I would like instead to concentrate my testimony on the response to it being proposed by the New England states. In its establishment of a constitutionally sound means for the states to regulate milk prices, the Compact draws upon a wealth of constitutional and regulatory history, both state and national, dating back to the Great Depression. For a variety of reasons, the effort by states to regulate milk prices has a rich, legal and political history. Drawing on the lessons of this history, the specific, regulatory function of the Compact is placed on a sound legal footing.

Yet during the interstate, legislative process of its development, the Compact has evolved into much more than merely a legal device to regulate dairy farm prices. During this six-year period, the Compact has become a unique partnership of the region's milk-producing and milk-consuming states. By harmonizing the potentially divergent concerns of Rhode Island and Vermont, the Compact has united them both behind the common purpose of ensuring the long-term viability of the New England dairy industry.

Perhaps most dramatically, with the increasingly active involvement of the New England Governors' Conference, the importance of the Compact has been extended beyond its specific subject matter, the dairy industry, to become for our region a positive example of formal, interstate cooperation. In the phrasing of Professor Frohnmayer, set forth in his attached letter, the Compact has come to represent an important experiment in cooperative federalism.

My testimony today will explore these three points for the Committee's consideration: 1) outlining briefly the Compact's Constitutional and legal footing, 2) identifying its basic, governing principles, including its balancing of the farmer and consumer interests, and 3) describing the interstate context in which the Compact was developed. Additionally, I will respond to some of the arguments presented in opposition to the Compact by the processors' lobby.

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[1] USDA New England Dairy Industry statistics

Before this specific discussion, by way of introduction, following is a brief explanation of the Compact's mechanics.

I. Introduction - Compact Explanation

The Compact would establish an interstate commission with authority to regulate dairy farm prices throughout the New England region. The compact commission's pricing authority would complement the existing federal milk marketing program, which establishes regulated, minimum, farm prices. The commission could use its regulatory power to remove harmful fluctuation in the federal pricing structure or to raise the federal floor price, if necessary.

The Compact is designed primarily to respond to the chronic problem of inadequate dairy farm prices, which beset the New England dairy industry. At the same time, it is premised equally on the assurance of control by the region's consumer states over the commission's regulatory process.

Specific compact provisions assuring control by the consuming states include: consumer representation from each state on the Compact commission, a requirement that a supramajority of two-thirds of the states approve any price increase, authority for each state to exempt itself from the regulation, even if it is approved by all other states, and a cap on the commission's pricing authority.

The commission's pricing authority would be exercised through a formal hearing process. The commission would take testimony from all market participants, with concentration on farmer costs of production and consumer ability to pay. If approved by producers, the commission-established price would become the legally enforceable price for the transaction between dairy farmers and fluid, or beverage milk, processors in the Compact region. All milk sold in the Compact region, regardless of its source, would be subject to the regulation.

Administration of the compact is patterned after the federal program. As with the federal program, the commission would pool the price regulation's proceeds and make individual payments to the farmers who supplied the regulated milk, based on their production. Because of the existence of the comprehensive federal program, administrative costs will be low. As with the federal program, the costs will be borne by processors; there is no cost to either state or federal government.

The commission's regulatory authority would apply only to the fluid, or beverage, component of the region's dairy marketplace. Processors purchasing milk for manufacturing purposes such as cheese and ice cream would not be subject to Compact regulation.

A commission price regulation must include a provision to prevent the production of surplus milk. Should its effort fail, the commission would bear the cost of surplus removals by the federal government, to ensure the Compact operates without cost to the government.

II. The Legal and Constitutional Foundation of the Compact

Since enactment of the Agricultural Marketing Agreement Act of 1937, dairy farm prices have been regulated by a comprehensive, dual scheme of federal and state law. The AMAA established a program for setting minimum farm prices through the adoption of so-called "Milk Marketing Orders". The states were left free to regulate farm prices, and even wholesale and retail prices, above the federally-established minimums.[2]

In the years following enactment of the AMAA, states from throughout the country have utilized their authority to regulate "over-order" prices. In the 1940s, for example, state Milk Control Boards regulated the price paid by processors for the raw product, in total amount, for almost a quarter of the nation's milk. Even today, state programs in eleven states currently regulate nineteen percent of the nation's milk supply.[3] In some cases, such as in Maine and Pennsylvania, the state Milk Control Boards establish through to the retail price, as well as the raw product cost.

Since the 1930s, however, milk increasingly has come to be marketed without regard to state boundaries. As a result, the Supreme Court has whittled away at the authority of states to regulate milk prices through litigation developed in a long series of cases. This chain of litigation culminated in last month's decision in West Lynn v. Commissioner[4].

The basis of these decisions is that the authority over interstate commerce delegated to Congress by the Constitution severely constrains the ability of states to regulate the price of goods travelling in interstate commerce. These decisions recognize the basic constitutional theory that, as part of the

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[2]See e.g. Schwegmann Bros. Giant Super Markets v. Louisiana Milk Comm., 365 F. Supp. 1144 (M.D. La 1973), aff'd without opinion, 416 U.S. 922 (1974); United Dairy Farms Coop. Assn. v. Milk Control Comm., 335 F. Supp. 1008 (M.D. Pa. 1971), aff'd without opinion, 404 U.S. 930 (1971).

[3]See Alden Manchester, Mark Weimer and Richard Fallert, The U.S. Dairy Pricing System, 6-8 USDA-ERS, Ag. Info. Bull. No. 695, April 1994.

[4]West Lynn Creamery, Inc. et al v Commissioner, Docket No. 93-141, 62 U.S.L.W. 4518, June 17, 1994.

transition from the Articles of Confederation to the Constitution, the states gave up to Congress their power over interstate commerce.

Within its well-known theory of "checks and balances", however, the Constitution provides states with a mechanism to recapture the authority to regulate interstate commerce surrendered by them to Congress. Article 1, Section 10, clause 3 of the Constitution authorizes states to enter into interstate compacts and, with the consent of Congress, to regulate jointly thereby the interstate commerce between or among the compacting states.

By virtue of obtaining Congressional consent to the establishment of an interstate compact, the compacting states' exercise of control over interstate commerce thereby becomes "invulnerable to constitutional attack under the Commerce Clause."[5]

The dairy Compact represents a marriage of the dual, federal/state statutory format of dairy farm price regulation and the constitutional authority of states to establish interstate compacts. Adoption of the Compact would restore the ability of the New England states to regulate "over-order" prices in their common market. Reflecting the evolution of the New England market from a primarily intra-state to a predominantly regional market, the states would be regulating prices collectively rather than individually, with the approval of Congress.

II. The Compact's Three Essential Principles

The Compact is designed upon three basic principles: 1) the original, core purpose - establishment of a legally sound authority to regulate farm milk prices in the region, 2) control by the consumer states over the regulatory pricing authority and 3) prevention of increased, surplus production attributable to any regulated increase in farm prices.

With regard to the first of these principles, as discussed in Part I above, establishment of the Compact's lawful authority over milk prices is premised upon the interstate compact and interstate commerce clauses of the Constitution, and upon the traditional, dual, statutory format of federal and state regulation.

Identification of its legal basis, however, describes only half of this core principle. Equally important is the competitive-neutral character of the regulatory power created by the Compact. In this sense, the Compact is modeled upon the federal law of milk price regulation. Under the Compact, as under the federal

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[5] Northeast Bancorp, Inc. v. Board of Governors of the Federal Reserve System, 472 U.S. 159, 174 (1985).

law, no burden other than the regulation of the farm price is placed on the interstate shipment of milk.

No barriers or restraints of trade are created. Any dairy farmer may market milk in the Compact region, whether or not the farmer resides in the region. Similarly, all milk dealers are regulated on an equal competitive footing under the Compact, for sales both within the Compact region and those outside the region.

The second principle, assurance of balance between the producer and consumer interests, accommodates the regional evolution of the New England fluid milk market into distinctly producer and consumer states. Two states, Vermont and Maine, with additional supply from New York, now provide the bulk of the milk marketed in New England. The remaining four states all produce some milk, but also rely in varying degrees on milk imported from the other states to supply their fluid needs. The most graphic example of this dichotomy in the marketplace is Rhode Island, which now has only 33 dairy farms.

According to this principle, in essence, because they are the market the consumer states are given control over the process by which price regulation would be imposed upon the marketplace. Unless the consumer states, through their representatives on the compact commission, are convinced that price regulation is necessary to promote their interest in the milk supply, no price regulation will be imposed.

As described in the Compact explanation above presented in the introduction, a number of specific provisions in the Compact track this principle of consumer state control.

The Compact's third controlling principle is covered in just five lines of text, yet is of equal importance as the other two. According to this principle, as part of any regulation which raises the farm price, the Compact requires the development of an accompanying program to prevent the production of increased, surplus milk attributable to the increase in price.

This provision follows from the other two basic principles of the Compact. The production of surplus milk would be contrary to the first purpose of establishing stable milk prices. Increased, surplus production would provide a downward, or contrary, pressure on the farm milk price.

In addition, and perhaps more important, the production of surplus milk would be contrary to the Compact's protection of the consumer interest. Any price increase imposed by Compact regulation will be borne only by the fluid, or beverage, component of the market. Because fluid consumption is relatively stable, increased or surplus production would have to be converted into manufactured products such as cheese and butter.

If there were no market for the product, the surplus would have to be purchased by the government. It would be entirely inappropriate for fluid milk consumers to in effect subsidize manufactured or surplus milk production in this manner. The Compact's requirement of a program to prevent surplus production thus is consistent with the Compact's purpose of consumer protection.

III. The Compact As a Model of Interstate Cooperation

The Compact began as a joint venture between Vermont and New York, the two main suppliers of milk to the New England market. Looking to the experience of their individual, state regulatory programs, legislators from these two states sought jointly to obtain the Congressional authority over interstate commerce needed to cure the regulatory defect in each of their individual programs.

Because of the regional evolution of the marketplace, however, it quickly became apparent that the Compact effort would have to include the consumer states in combination with the producer states. This was the first, crucial, step of the evolution toward a true interstate compact movement.

There were two consequences of the recognition that both consumer and producer states would have to be represented at the bargaining table. First, a diverse group from throughout New England was assembled, all having the common interest in maintaining the stability of New England's dairy industry. Though having a common interest, they came to the table with markedly divergent consumer/producer perspectives. As a result, there began the struggle to find a workable balance between the two interests, in statutory form.

The challenge posed was to define the common interest both a legislator from the inner city of Providence, Rhode Island, and one from the dairy country of Saint Albans, Vermont had in maintaining the region's dairy industry.

The lack of correlation between changes in the producer and consumer prices emerged as the key fact. As documented by a 1991 GAO study, farm prices have cycled up and down quite erratically over time. While the consumer price has tracked the upward swings in the farm price, there has been little corresponding reduction in the consumer price when the farm price has dropped. The net result is that the farm price has ended up in almost the same place as it was 10 years ago, while the consumer price has increased by almost 30 percent.[6]

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[6] For a most recent analysis of this trend, see Agricultural Outlook, June 1994. See also Determinants of the Farm to Retail Milk Price Spread, USDA bulletin number 693, March, 1994.

The consumer representatives quickly recognized that providing stability to the regulated price would serve the long-term benefit of consumers by taking them off this roller coaster of price swings. This sparked the active interest of the consumer representatives. Articulation of the assurance of control by the consumer states over the regulatory process established the final, workable balance between the producer and consumer interests, and the deal among their representatives was struck.

While the search for the proper balance between farmer and consumer interests was being pursued, the Compact effort evolved in another, exciting way. Representatives of the six New England states were for the first time collectively rather than individually addressing a common problem. The history of state milk price regulation has been one of isolated, individual state action. Indeed, just prior to their adoption of the Compact, each of the six New England states had imposed an individual price regulation on the marketplace.

As representatives of these representatives now worked together on the dairy price regulation issue, the exercise in formal, interstate cooperation took on an identity of its own. This new feature of the Compact effort was best articulated by members of the New England Governors Conference, which increasingly involved itself in promoting the Compact. Time and again, the governors made reference to the pressing need for the states in the region to work collectively rather than competitively. By example, the governors identified a number of problems that, like the dairy farm price issue, were immune from individual state solution. As the Compact progressed in defining a solution to its particular concern, these leaders became increasingly drawn to it as a model of the needed interstate cooperation.

In their statements of support attached to my testimony, Professors Fallon and Frohnmayer have described the constitutional theory of interstate cooperation. Professor Frohnmayer defines it as "cooperative federalism." While the Compact holds real promise for stabilizing the dairy industry, I believe that its enduring value is as an experiment in cooperative federalism.

IV. Reply To Opposition of Processors' Lobby

I would like to respond briefly to some of the arguments against the Compact presented by Milk Industry Foundation, the national, fluid milk processors' lobby. Initially, I would note that two of the four, local, fluid processors in the New England market actively supported the Compact's passage by the state legislatures. (A letter from one of these, Stop and Shop, Inc., is attached to my testimony.) The other two remained neutral. In view of the stance of these processors during the state process, I would suggest that MIF is not representing the

position of those who would be directly affected by the Compact, in its national lobbying effort against the Compact.

More specifically, MIF has argued that the Compact would "supplant" the federal regulatory program. This argument ignores the long-standing regulatory role that states have played with regard to milk prices, described in Part I of my testimony above. The purpose of the Compact is to restore this traditional state function. It does make political sense for MIF to ignore the state's traditional, regulatory function, as the processors have been the entity regulated. Their omission of any discussion of the prior state function, however, takes the Compact out of its proper context. As with state regulation in the past, the Compact will complement the federal regulatory program rather than supplant it.

MIF has similarly suggested the Compact would generate a glut of milk production which would distort the national milk market. Again, this argument has been presented out of context. There has been no discussion by MIF of the provisions in the Compact precisely designed to prevent this outcome. Moreover, even if these self-governing mechanisms failed, the New England dairy industry is a marginal component of the national market, producing only 3.5 percent of the national supply. It would be virtually impossible for this small region of production to cause the adverse effect on the national market described by MIF.

MIF has also asserted it concern that the Compact will cause a runaway consumer price increase.[7] Once again, the argument has been presented out of context, and in this case, in a distorted fashion. To support this argument, they point to what is actually the numerical limitation, or cap, of the amount the Commission could raise the farm price. The basis of their argument, in other words, is a provision added by the consumer states as <u>protection</u> against an unchecked rise in consumer prices.

More generally, MIF has completely ignored the numerous provisions designed to protect the consumer interest contained in the Compact. Indeed, they seem to ignore completely that any state process took place. This is an important consideration in reviewing their arguments, however, as the Compact never would

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[7]It is somewhat incongruous for MIF to be presenting a consumer protection argument, in view of the fact that consumer prices have risen about 30 percent in the last 10 years at the same time farm prices have remained constant or declined. The GAO in 1991 documented this increasing spread of farm and retail prices for a number of markets nationally. See also <u>Agricultural Outlook</u>, June 1994.

have passed in Rhode Island had not the Legislature been convinced that the consumer interest was adequately protected.

MIF also suggests that the Compact would be administered so as to provide a competitive advantage to processors who market milk outside the Compact region. This is a hypothetical argument for the most part. Because of the design of the federal milk marketing program, very little fluid milk is actually marketed to the west, out of New England, so the compact commission would be unable to achieve the purpose MIF suggests. In any event, as noted in my discussion of the Compact's basic principles, in part II above, the Compact is patterned upon the federal program's non-discriminatory design. The purpose is to rationalize the producer price, with all processors placed on an equal competitive footing.

Finally, MIF has argued that the Compact is contrary to the constitutional law of interstate commerce. This argument is almost a non-sequitur in view of the corollary, constitutional provision authorizing the establishment of interstate compacts discussed in Part I above. There is no legal issue with regard to whether Congress may approve the Compact, as MIF has tried to suggest.

Conclusion

This past week, my neighbor, a former dairy farmer, told me he had received eleven auction notices this month alone, resulting from the recent plunge in dairy farm prices. This is precisely the problem the Compact is designed to address.

With H.R.4560, the states have put before you a collective, cooperative program to address the dairy farm price problem. Both to give life to the proposed program, and to lend vitality to this formal, interstate initiative, I urge you to vote the bill favorably out of subcommittee.

Interstate Compact Legislative Process

Connecticut: (P.L.93-320) House vote =143-4; Senate vote = 30-6. (Joint committee on Environment voted bill out 22-2; Joint Committee on Government Administration and Relations voted bill out 15-3; Joint Committee on Judiciary voted bill out 28-0)

Maine: Originally adopted Compact enabling legislation in 1989 (P.L.89-437) Floor votes and Joint Committee on Agriculture vote not recorded. The law was amended in 1993. (P.L.93-274) House vote = 114-1; Senate vote = 25-0. (Joint Committee on Agriculture vote not recorded)

Massachusetts: (P.L. 93-370) Approved by unrecorded voice votes.

New Hampshire: (P.L.93-336) Senate vote = 18-4; House vote = unrecorded voice vote; (Senate Committee on Interstate Cooperation vote = unrecorded voice vote; House Committee on Agriculture voted bill out 17-0.)

Rhode Island: (P.L.93-336) House vote = 80-7; Senate vote = 38-0. (House Committee on Judiciary voted bill out 11-2; Senate Committee on Judiciary voice vote not recorded.)

Vermont: Originally adopted Compact in 1989. (P.L.89-95) House vote = unanimous voice vote; Senate vote = 29-1. The law was amended in 1993. (P.L.93-57) Floor voice votes, and House and Senate Agriculture Committee voice votes, not recorded.

NEW ENGLAND GOVERNORS' CONFERENCE, INC.

RESOLUTION NUMBER 120

A Resolution of the New England Governors' Conference, Inc. in support of the Northeast Dairy Compact.

Whereas, the Commissioners of Agriculture from the six New England states have worked diligently with leaders of the dairy industry to develop a uniform draft Northeast Interstate Dairy Compact: and

Whereas, as the best means yet identified to provide price relief to our dairy farmers, the Compact holds great promise for meeting the pressing need of our region to preserve the viability of our agriculture: and

Whereas, the Compact is an unique, concrete expression of the common will of those directly involved in our region's dairy industry; and

Whereas, the Compact must be passed in identical form by each of the New England states before it is presented to Congress for ratification;

NOW THEREFORE BE IT RESOLVED that The New England Governors' Conference, Inc. supports the draft Northeast Interstate Dairy Compact developed by the Commissioners of Agriculture now before the New England State Legislatures; and

BE IT FURTHER RESOLVED that, to ensure the draft Compact remains uniform, the New England Governors' Conference, Inc. urges each state legislature to coordinate its review and amendment process with that of their counterparts in New England, and

BE IT FURTHER RESOLVED that, to ensure the coordinated process responds promptly and effectively to this regional call to action, the New England Governors' Conference, Inc. urges all the New England State Legislatures to act quickly upon the Compact; and

BE IT FURTHER RESOLVED That, a copy of this resolution be sent to the leadership of the Senates and Houses of Representatives of each New England State and to each of the Chairs of the appropriate Legislative Committees.

NEW ENGLAND GOVERNORS' CONFERENCE, INC., Boston, Massachusetts 02110-1226

This Resolution is effective immediately.

ADOPTION CERTIFIED BY THE NEW ENGLAND GOVERNORS' CONFERENCE, INC. on February 1, 1993.

Howard Dean, M.D.
Governor of Vermont
Chairman

NEW
ENGLAND
GOVERNORS'
CONFERENCE, INC.

76 Summer Str
Boston, Massachusetts 021 2
(617) 423-6900 • FAX (617) 423-73

February 4, 1994

Honorable William J. Clinton
President
The White House
Washington, DC 20250

Dear President Clinton:

We write to ask for your support of the Northeast Interstate Dairy Compact during the upcoming Congressional approval process.

The Dairy Compact has been enacted into law by the six New England states, and the joint Congressional Resolution will be introduced in early March. We hope you will support this unique experiment in cooperative federalism, during the Congressional review process. The Compact is a bi-partisan, state-sponsored, regional response to the chronic problem of low dairy farm prices. If successfully implemented, the Compact will stabilize our region's dairy industry and reinvigorate this crucial segment of our rural economy, without cost to the federal government or adverse impact on the national industry.

If approved, the Compact could well serve as a model for other regions of the country. We welcome your support.

Sincerely,

Bruce Sundlun
Governor of Rhode Island
Chairman

84-658 178

Governor BRUCE SUNDLUN Rhode Island CHAIRMAN | Governor STEPHEN MERRILL New Hampshire VICE CHAIRMAN | Governor LOWELL P. WEICKER, Jr. Connecticut | Governor JOHN R. McKERNAN, Jr. Maine | Governor WILLIAM F. WELD Massachusetts | Gov HOWARD Ver

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HOWARD DEAN, M.D.
Governor

April 5, 1994

Honorable Mike Espy
Secretary
U. S. Department of Agriculture
14th St. and Independence Ave., SW
Washington, DC 20250

Dear ~~Secretary Espy:~~ Mike,

I am sorry I was unable to attend breakfast with you on Monday because of a prior commitment. I would like to take the opportunity of your visit, nonetheless, to express my personal interest in the Northeast Interstate Dairy Compact, which will soon come before the Senate Judiciary Committee, and to ask for your support.

As you know from our February letter to you, the Compact has increasingly drawn active support and assistance from each member of the New England Governors' Conference. Despite being named the "Dairy Compact", the Conference has come to see it as providing a benefit for each of our states, for dairy consumers and farmers alike, and it was on this more broad premise that the bill was passed with almost astonishing support by all of the New England state legislatures.

As the Compact has progressed and built up momentum, the Conference has also come to see it as a positive example of just what can be accomplished when seemingly disparate interests in the region pull together. In this sense, for the Governors' Conference, the Compact has come to transcend its specific focus on the dairy industry.

Obviously, my primary interest in asking for your support of the Compact in Congress is for the immediate benefit it would provide to Vermont's beleaguered dairy industry. At the same time, based on the broader understanding of the Compact developed by our Governors' Conference, I believe it would be most appropriate for the federal government, through your department, to assist the New England states in implementing this state-sponsored initiative.

Page 2
Honorable Mike Espy, Secretary
U. S. Department of Agriculture
April 5, 1994

I hope you will give the Compact careful attention in the remaining few weeks before the Senate hearing, and decide to give it your active support.

Sincerely,

Howard

Howard Dean, M.D.
Governor

HD/csc

THE COMMONWEALTH OF MASSACHUSETTS
EXECUTIVE DEPARTMENT
STATE HOUSE • BOSTON 02133
(617) 727-3600

WILLIAM F. WELD
GOVERNOR

ARGEO PAUL CELLUCCI
LIEUTENANT-GOVERNOR

June 2, 1994

The Honorable Edward M. Kennedy
United States Senate
315 Russell Senate Office Building
Washington, DC 20510

Dear Senator Kennedy:

I am writing to express my strong support for the Northeast Interstate Dairy Compact. As you know, the problems plaguing Massachusetts' dairy farm industry extend throughout New England, threatening the survival of a critical part of our heritage.

The Northeast Interstate Dairy Compact will establish a regional commission in response to the dissolution of the New England dairy market into distinct consumer and producer components. Currently, four of the six New England states are dairy importing states; only Vermont and Maine provide sufficient product for in-state consumption. Through its design, the Compact provides the consumer states control of the regulatory pricing process. The regional nature of the Compact ensures, however, that it will benefit dairy consumers and producers in Massachusetts and throughout the Northeast. Indeed, the Northeast Interstate Dairy Compact represents a comprehensive approach to New England's dairy problems, exemplifying the strength derived from regional cooperation.

Thank you for your consideration as the Senate Judiciary Committee debates the Compact's enabling legislation.

Sincerely,

William F. Weld

cc: The Honorable Joseph R. Biden

Richard H. Fallon, Jr.
Harvard Law School
Cambridge, Massachusetts 02138

June 30, 1994

The Honorable John Bryant
Chair, Subcommittee on Administration
Law and Governmental Relations
House Judiciary Committee
B351-A Rayburn House Office Bldg.
Washington, D.C. 20515

Re: Proposed Northeast Interstate Dairy Compact: H.R. 4560

Dear Congressman Bryant:

I write on behalf of my client, the Northeast Interstate Dairy Compact Committee, in regard to H.R. 4560, which would establish a Northeast Interstate Dairy Compact.

The Northeast Interstate Dairy Compact Committee consists of the commissioners of agriculture of the six New England states, the original sponsors of the proposed Compact in the Vermont and New York legislatures, the chairs of two New England dairy cooperatives, and two dairy farmers. The Compact Committee was formed to promote the establishment of a Northeast Interstate Dairy Compact as a response to the chronic regional problem of inadequate dairy prices. Depressed dairy prices increasingly threaten the dairy industry of the Northeast United States and the cultural, economic, and ecological benefits that the dairy industry provides.

The Compact Committee has asked me to write to you about some of the constitutional and legal issues that the proposed Compact raises, has been claimed to raise, or might be thought to raise. (Others have articulated the substantive policies that the Compact would promote). My constitutional and legal conclusions can be summarized briefly: enactment of H.R. 4560, authorizing the Compact, (i) would be constitutionally permissible under the Commerce[1] and Compact[2] Clauses of the

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[1] U.S. Const., Art. I, sec. 8, cl. 3.

United States Constitution, (ii) would not conflict with the central policies of the Agricultural Marketing Agreement Act of 1937 ("AMAA"),[3] and (iii) would accord with the tradition of constitutional federalism that values diversity and state and regional experiment in promoting cultural, economic, and ecological benefits.

When put together, the relevant bodies of law establish that the decision whether to approve the Dairy Compact is a political one, for Congress, and suggest that considerations of federalism should weigh more heavily than the shibboleths of laissez faire economics.

1. Authorization of the proposed Compact is well within Congress's powers under the Commerce and Compact Clauses of the Constitution. The Constitution vests Congress with power to regulate interstate commerce.[4] In the absence of federal legislation, the congressional power is said to be "dormant," and the Supreme Court has developed various tests for the permissibility of state legislation that either discriminates against or incidentally restricts interstate commerce. It is unnecessary, however, to rehearse those tests here. The judicially developed tests are inapplicable in cases in which Congress enacts legislation that either prohibits or permits regulation by the states. In cases in which Congress expresses its approval or disapproval of state legislation, Congress's power is no longer dormant, and Congress's determination becomes controlling.[5]

In light of these principles, congressional consent to the proposed Northeast Dairy Compact would clearly vitiate any concern that the proposed Northeast Dairy Compact might violate "the dormant commerce clause." Both the holdings and the rationale of cases invalidating prior state efforts to support

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[2] U.S. Const., Art. I, sec. 10, cl. 3.

[3] 7 U.S.C. sec. 601 et seq., as amended (1988 & 1993 Supp.).

[4] See U.S. Const., Art. I, sec. 8, cl. 3.

[5] See, e.g., Prudential Ins. Co. v. Benjamin, 328 U.S. 408, 421-27, 433-36 (1946); Southern Pacific Co. v. Arizona, 325 U.S. 761, 769 (1945) (describing as "undoubted" the power of Congress "to redefine the distribution of power over interstate commerce" to "permit the states to regulate the commerce in a manner which would otherwise not be permissible").

dairy prices would be rendered irrelevant.[6] Acting pursuant to its constitutional authority to regulate commerce, Congress possesses indisputable power to authorize states to promote and protect domestic industries such as the dairy industry.[7]

Congress's capacity to authorize cooperative state action, as under the Northeast Interstate Dairy Compact, is equally indisputable. The Compact Clause empowers Congress to approve cooperative arrangements of this kind.[8] As the Supreme Court stated in Cuyler v. Adams, "By vesting in Congress the power to grant or withhold consent [to interstate compacts], or to condition consent on the States' compliance with specified conditions, the Framers sought to ensure that Congress would maintain ultimate supervisory power over cooperative state action that might otherwise interfere with the full and free exercise of federal authority."[9] The Compact Clause, like the Commerce Clause, makes it the role of Congress, not the courts, to determine whether an interstate agreement unacceptably interferes with national powers or the interests of other states. Congressional consent under the Compact Clause would therefore immunize the proposed Dairy Compact from objections based on the

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[6] Arguments against the Compact that appeal to cases such as Baldwin v. G.A.F. Seelig, Inc., 294 U.S. 511 (1935), and Farmland Dairies v. McGuire, 789 F. Supp. 1243 (S.D.N.Y. 1992), are therefore misleading at best.

[7] See, e.g., Northeast Bancorp, Inc. v. Board of Governors of the Federal Reserve System, 472 U.S. 159, 174 (1985) ("When Congress so chooses, state actions which it plainly authorizes are invulnerable to constitutional attack under the Commerce Clause.").

[8] Because the subject matter of the Northeast Interstate Dairy Compact affects interstate commerce, and because interstate commerce is clearly an appropriate subject for federal legislation under the Commerce Clause, it is clear that Congress may authorize the Compact under the Compact Clause. See Cuyler v. Adams, 449 U.S. 433, 440 (1981)(establishing that "where Congress has authorized the States to enter a cooperative agreement, and where the subject matter of that agreement is an appropriata subject for federal legislation, the consent of Congress transforms the States' agreement into federal law under the Compact Clause"). It is therefore irrelevant whether the Northeast Interstate Dairy Compact meets the criteria of cases such as United States Steel Corp. v. Multistate Tax Comm'n, 434 U.S. 452 (1978), for interstate agreements that require congressional approval in order to avoid invalidation under the Compact Clause.

[9] 449 U.S. 433, 439-40 (1981).

Commerce Clause.

2. If approved by Congress, the Northeast Dairy Compact would not conflict with the central policies of the Agricultural Marketing Agreement Act of 1937. This lankmark piece of New Deal legislation, like the proposed Compact, establishes minimum pricing regulations for sales of milk by farmers to processors, and it does so for the same purpose of maintaining a healthy dairy industry throughout the nation's various regions. Under the AAMA, states retain authority to establish prices above the federally established floor.[10] The Compact is therefore consistent with the principal aims of the AAMA.

The AMAA and the federal market order system have always coexisted with state regulatory programs establishing minimum producer prices. State programs in eleven states currently regulate 19% of the nation's milk supply.[11] In the 1940s, shortly after the enactment of the AAMA, state programs regulated almost a quarter of the nation's milk.[12] Accordingly, arguments founded on fears that the Compact would undermine the federal order system are inconsistent with the experience of fifty years.

3. Congressional authorization of interstate compacts accords with the tradition of federalism that values experiment, cooperative innovation, and state and regional diversity. In one of his most famous opinions, Justice Louis D. Brandeis lauded the states as laboratories of experiment.[13] Brandeis echoed a deep tradition of American federalism, which resists homogenization, values diversity, and entrusts to the states a large responsibility for preserving and promoting the welfare of their citizens.

In an integrated modern economy, nearly all state regulation has at least an indirect impact on interstate commerce. Without congressional authorization, the ambit for state regulation to

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[10] See, e.g., Schwegmann Bros. Giant Super Markets v. Louisiana Milk Comm'n, 365 F. Supp. 1144 (M.D. La. 1973) (three judge court), aff'd without opinion, 416 U.S. 922 (1974); United Dairy Farmers Coop. Ass'n v. Milk Control Comm'n, 335 F. Supp. 1008 (M.D. Pa. 1971) (three-judge court), aff'd without opinion, 404 U.S. 930 (1971).

[11] See Alden Manchester, Mark Weimer, & Richard Fallert, The U.S. Dairy Pricing System 6-8 (USDA-ERS, Ag. Info. Bull. No 695, April 1994).

[12] See id.

[13] See New State Ice Co. v. Liebmann, 285 U.S. 262, 311 (1932) (Brandeis, J., dissenting).

preserve the economic, cultural, and ecological benefits of a healthy dairy industry has therefore narrowed. But the Commerce Clause reflects a theory of political union, not an unbending prohibition against state efforts to meet distinctively local needs.[14] Congress retains the indubitable authority to authorize state and cooperative efforts to preserve the distinctive, local benefits of industries -- such as the dairy industry -- that are woven deeply into the fabric of state and regional life.

Under our Constitution, the decision whether to authorize the Northeast Dairy Compact is expressly political, not economic.[15] It is a decision for Congress, in its political wisdom, not for the courts. The Constitution puts the decision in these terms to ensure an appropriately political balance of interests on which American federalism depends. On the one hand, state and regional interests must not overwhelm the national interest. On the other, room must be left for the states, individually or cooperatively, to promote values and ways of life that have shaped their traditions, suffused their culture, and inspired their hopes. Under the United States Constitution, "federalism" is not a short-hand for "national uniformity." No provision of the Constitution mandates a national, regional, or local regime of laissez faire. As Felix Frankfurter and James Landis noted in their classic article on the Compact Clause, "Creativeness is called for to devise a great variety of legal alternatives to cope with diverse forms of interstate interests."[16]

Within the American tradition, a vital federalism is not hostile to -- but instead requires -- state and regional initiatives that depart from, go beyond, or attempt variations on prevailing national norms. The Compact Clause expressly grants Congress the political discretion to approve such initiatives. Viewed in this light, the largest issues surrounding H.R. 4560 are only secondarily ones of law or economics. The largest issues involve federalism. The proposed Northeast Dairy Compact tests the openness of Congress to regional cooperation, diversity, and experiment.

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[14] See Laurence H. Tribe, American Constitutional Law 417 (2d ed. 1988).

[15] See, e.g., Cuyler v. Adams, 449 U.S. 433, 441 n.8 (1981) (noting that "'the requirement that Congress approve a compact is to obtain its political judgment'").

[16] Felix Frankfurter & James M. Landis, The Compact Clause of the Constitution -- A Study in Interstate Adjustments, 34 YALE L. J. 685, 688 (1925).

I hope the Senate's deliberation will focus on these issues and that H.R. 4560 will be approved.

Please feel free to share this letter with any of your colleagues.

Sincerely,

Richard Fallon

Richard Fallon

cc: Honorable John Olver

UNIVERSITY OF OREGON

July 29, 1994

The Honorable John Bryant
Chair, House Judiciary Subcommittee on
Administrative Law and Governmental Relations
B351-A Rayburn House Office Building
Washington, D.C. 20515

Dear Representative Bryant:

I write in support of the Northeast Interstate Dairy Compact, S. 2069, currently before the Judiciary Committee. The region and specific subject matter involved are far from home and my area of expertise, yet the constitutional issue presented is one to which I have devoted much study, and is one of great professional and personal interest.

Based on my comparative experience with another Interstate Compact initiative, the Northwest Power Planning Council, I am confident the Dairy Compact is a constructive use of this constitutional device, and worthy of Congressional approval.

As you may know, we in the Pacific Northwest have had the benefit since 1982 of operation of the Northwest Power Planning Council. Under the Compact Clause and as authorized by Congress, the Council, composed of appointees by the governors of the four northwest states, is charged with developing a comprehensive energy plan for the region.

I have been closely associated with the Council's establishment and operation as an Oregon state legislator, attorney general and law professor. From this experience, I have come to greatly appreciate the creative potential which the Compact Clause offer to address regional problems. The Council has represented the collective interests of the region's consumers and energy producers, and furthered their joint interest, far beyond what would have been possible by individual state action or federal effort.

The potential for creative, cooperative, state action contained in the Compact Clause was eloquently described in the prophetic law review article authored generations ago by Felix Frankfurter and James M. Landis. In the conclusion of their exhaustive review these still respected authorities declared:

> The imaginative adaptation of the compact idea should add considerably to resources available to statesmen in the solution of problems presented by the growing interdependence, social and economic, of groups of States forming distinct regions. It may well be that the New England States, the Middle Atlantic States, the Pacific Coast States, and similar groupings will each evolve, through compact, common industrial standards, thereby recognizing diversities not coincident with the capricious boundaries of forty-eight States not yet to be resolved by a flat

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July 29, 1994
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> common denominator nation-wide in its operation. Time and circumstances alone must determine the existence of such diversities and common needs and the wisdom of regional rather than national treatment.

F. Frankfurter, J. Landis, The Compact Clause of the Constitution - A Study in Interstate Adjustments, 34 Yale Law Journal 685, 729 (1925)

Judicial review of cases before the United States Supreme Court has reinforced the high court's view of the clause as a powerful and innovative constitutional device for dispute resolution. For example, in an unusual editorial comment, in West Virginia ex rel. Dyer v. Sims, 341 U.S. 22, 26 (1951), the Supreme Court observed:

> Indeed, so awkward and unsatisfactory is the available litigious solution for these problems that this Court deemed it appropriate to emphasize the practical constitutional alternative provided by the Compact Clause. Experience leads us to suggest that a problem such as that involved here is 'more likely to be wisely solved by cooperative study and by conference and mutual concession on the part of the representatives of the States so vitally interested in it than by proceedings in any court however constituted.' New York v. New Jersey, 256, U.S. 296, 313 (1921). That suggestion has had fruitful response.

Based on this rich precedent, our Council survived a strong legal challenge in its early years. As I noted several years ago in an extended analysis, the decision by the Ninth Circuit Court of Appeals in Seattle Master Builders v. Pacific N.W. Power Planning Council, 786 F.2d 1359 (9th Cir. 1986) affirmed the "flexibility of this new form of federalism" and assured that its use is bounded only by "the limits of human imagination." D. Frohnmayer, The Compact Clause, the Appointments Clause and the New Cooperative Federalism: The Accommodation of Constitutional Values in the Northwest Power Act, 17 Environmental Law Journal, 767, 783 (1987).

As I understand it, the Dairy Compact neatly tracts this well-defined constitutional lineage. Litigation concerning the ability of states to regulate milk prices, included a case pending before the United States Supreme Court, has defined much of our understanding of interstate commerce law and the respective powers of state and federal government. This contentious industry is regulated under both federal and state law in New England; yet the chronic problem of inadequate dairy farm income remains acute for New England farmers.

In response to these truly regional needs, the New England states have invoked their constitutional prerogatives under the Compact Clause to devise a cooperative, regional solution.

I am informed that the New England dairy compact reflects the evolved division of the New England marketplace into consumer and producer states. If that is the case, the Dairy Compact is a paradigm of interstate cooperation. As with the Northwest Power Planning Council, the diverse constituent groups can be assured representation on the Compact Commission, and the interests of each are simultaneously protected and promoted. The proposed Compact is yet another fine example of how the Compact Clause's flexible power may be tailored to respond best to a region's needs and interests.

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I understand that the national milk processors' lobby opposes the Compact based on its view that the Compact might damage the existing federal program. However, the very purpose of congressional consent is to secure assurance that the national government has evaluated national interests in the matter. See e.g. Cuyler v. Adams, 449 U.S. 433, 440 (1980). According to this authority, the gist of Congress's function in reviewing a Compact is to ensure that the proposed agreement does not unduly erode federal authority. That is properly a political question within the usual ambit of routine legislative authority.

I urge you and your colleagues to review all contentions within the constitutional context defined by the Compact Clause.

The sovereign power of the New England states to enter into this compact easily can be vindicated. States individually have the sovereign right to regulate the business of milk processors, within the limits of the Interstate Commerce clause; their ability to do so collectively by Compact is worthy of approval as long as there is no contrary effect on the national program and marketplace as properly determined by Congress.

Cooperative federalism as embodied in the Dairy Compact strikes me as a worthy objective, and one which may be reachable only by this inventive and time honored device.

Please feel free to share this letter with your colleagues. Thank you for your consideration.

Sincerely,

Dave Frohnmayer

Dave Frohnmayer
President*
Dean, School of Law (1992-94)
Attorney General of Oregon, Emeritus (1980-91)

cc: Honorable Patrick Leahy
Honorable John Olver

*All titles are for identification purposes only and do not indicate any institutional endorsement of these views.

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July 29, 1994

Honorable John Bryant, Chairman
House Judiciary Subcommittee on Administrative Law
and Government Relations
B 351-A Rayburn House Office Building
Washington, DC 20515

Attn: Nichole Jenkins

Dear Mr. Chairman:

We write to express our support for the Northeast Interstate Dairy Compact. The Compact addresses the chronic pricing problem confronting our region's dairy farmers. It would allow the enhancement and stabilization of milk prices, yet do so without adverse impact on our industry either locally or nationally. The Compact will serve the long-term interests of the entire New England dairy industry, and we urge your support.

We are the largest supermarket chain in New England. We process many of our products, including fluid milk, which represents a major component of our business. It is in our best interest that our supplying dairy farms remain local, as well as stable and productive.

Because of its perishability, milk is expensive to transport. Should New England farms continue to go out of business, we are concerned that we will be forced to obtain our supply of milk from farms increasingly remote from our market. This will both increase our procurement costs and reduce the raw product's quality. The finished, retail product will, therefore, be more expensive and of less quality. Our customers, as well as our business, in other words, are ill-served, by the continued decimation of New England dairy farms.

Despite the resultingly obvious importance of doing so, in the current marketplace it is often very difficult to pay farmers a price which ensures their financial well-being and still preserves our competitive position. The Compact will resolve the defects in the regulatory component of the marketplace which are causing this problem. The resulting stability will benefit all members of the industry, both farmers and processors, alike.

Honorable John Bryant, Chairman
Page Two
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Because of its importance to our industry, we have worked closely with the Compact's sponsors and supported its passage by the Massachusetts Legislature last year. We have also followed closely the current debate in Congress. We are concerned that the expressed industry opposition to the Compact has not adequately accounted for the importance of maintaining a reliable, local supply of fluid milk as described above. We write to ensure that this concern will be kept in mind by your Committee.

We hope next your subcommittee will approve the bill at the upcoming hearing, and that the bill will move quickly and successfully through the full Congressional process.

Sincerely,

Charles F. Arbing

Charles F. Arbing
Vice President, Manufacturing/Transportation

Dairymen

10140 Linn Station Rd., Louisville, Ky. 40223-9990

Dairymen, Inc. General Office
Phone (502) 426-6455

July 29, 1994

The Honorable John Bryant, Chairman
House Judiciary Subcommittee on
Administrative Law and Governmental Relations
B351-A House Rayburn Office Building
Washington, D.C. 20515

Dear Congressman Bryant:

On behalf of Dairymen, Inc. I write to express our support for H.R. 4560, the Northeast Interstate Dairy Compact.

For many years, we in the Southeast also experienced the benefits of state milk regulatory pricing programs. These programs did provide some added stability to dairy farmer milk prices and consequently to the state and regional industry as a whole.

Over time, as milk increasingly moved in interstate commerce, practically all of the state regulatory pricing programs have fallen victim to the Constitutional law of interstate commerce. Absent these state regulatory pricing programs, milk prices are now being set at minimum levels primarily by federal law. Dairy farmers in the southeast, as well as throughout the country, have felt the price squeeze brought about in part by this development in the regulated marketplace.

The Dairy Compact before your Committee represents an important alternative solution to this pricing problem. The Compact can help restore the vitality of the state regulatory pricing function, in a constitutional manner. The Compact, while accounting for the interest of both producers and consumers, will result in the regulation of only Class I, or beverage milk, and will regulate only a regional market. The Compact will not adversely affect our national regulatory program.

Because the New England fluid milk market is relatively small, the proposed Compact can serve as a test of the concept of regional price regulation with little risk to the Southeast or to the national regulatory program. Therefore, we support your Committee's approval of the Compact.

Sincerely yours,

James E. Mueller

James E. Mueller
Executive Vice President and
Chief Executive Officer

JEM/pja

** TOTAL PAGE.002 **

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To Danny Smith	From Bob Wellington
Co.	Co. Agri-Mark
Dept.	Phone #
Fax #	Fax #

June 6, 1994

The Hon. Joseph Biden, Chair
Judiciary Committee
United States Senate
Washington, D.C. 20510

Re: Interstate Dairy Compact (S. 2069)

Dear Senator Biden:

I urge you and the other members of the Judiciary Committee to approve S. 2069, the Northeast Interstate Dairy Compact. While we are 3,000 miles from the proposed Compact region, we are very close to its proponents in spirit.

The proposed Compact goes to the heart of the Federal role in the regulation of dairy markets. The current statute under which milk marketing is regulated does not provide for national consistency, and in fact contemplates that some areas will develop their own alternatives to Federal regulation.

As a result, many states (such as California and Montana) have their own regulatory structures. State regulation works there, because their major markets are well within their state boundaries, but it does not work in areas like New England (or Portland, Oregon and Vancouver, Washington, for that matter) where the interstate nature of milk marketing makes state regulation very difficult.

For New England or other multi-state markets to have the same state regulatory flexibility that California and other states have, an interstate compact is desirable and may be essential. Accidents of geography should not prohibit the Northeast from doing what California is doing.

There is room to debate whether non-Federal, regional experiments are appropriate. But unless and until the Agricultural Adjustment Act is amended to require a single, national system, Interstate Compacts should be encouraged so that adjacent states with interstate markets (like Portland, Maine and Portland, Oregon) can effectively enact the local regulatory schemes that the Act currently anticipates.

Thank you for your consideration of our views.

Sincerely,

Doug Marshall

Douglas C. Marshall
Vice President Public Affairs,
Corporate Counsel, & Secretary

[illegible] • Evaporated Milk

Mr. BRYANT. Well, let me ask some questions.

First, I assume that the principal purpose of all of this is to protect the family dairy farmer, keep the institution of family farming alive in six States. Let me ask you to explain why that is a worthy goal. I think it is fair to ask you to explain why is that an important national goal? Assuming there is not a shortage of dairy products, as there clearly are not, why is that a worthy goal?

Mr. BLUM. May I take a crack at that, Mr. Chairman?

In Connecticut, the dairy farmers utilize 80 percent of the cropland in the State. They are now about third or fourth in the total dollar volume of agricultural sales, but they are part of the open space fabric of Connecticut and New England. They are stewards of a lot of the land that is kept in a condition that makes New England attractive to tourism, which is picking up again.

We have been through 18 quarters of recession, 4½ years, and we have spent in our State close to $70 million preserving farmland as open space and as a renewable resource. And the reason for that is that it is part of the fabric.

I knew a fellow in the cattle business who used to say it is kudzu that holds the south together. Well, it is the dairy farms that hold New England together to a very substantial extent. And this goes to family values, too. I think that we need more families like the ones that I have listed in my testimony to survive in Connecticut.

Mr. BRYANT. Well, let me speak to that. I am going against some of my own sentiments in some of these questions.

But I have even the dairy farmers in my State—and some of them appear to be the old-fashioned family, everybody pitching in, but most of those fellows live in town and drive out to the dairy, and they work their heads off. They got a group of workers that are there 24 hours a day. They are milking those cows three or four times a day. I don't know much about the industry, but I was surprised to see how much work goes on.

I didn't see the kids out there having a lot to do with that. It looked to me like either a very efficient, well-run business or they were out of business. I wonder to what extent the stereotype of the family farmer operating a dairy farm really characterizes the dairy industry today, in your region.

Mr. BLUM. I would say in New England, maybe in contrast to other sections of the country, it really is a family business. We have got 318 farms left in Connecticut, and I think in the going on 3 years that I have been commissioner, I have met maybe over half of them.

I am a member of the Litchfield County Dairy Committee now as an honorary member, and they are families. There are kids coming along. We had the Nye family, in their 30's, they are milking 350 cows now, which is a big farm. They are in the top third of the farms in productivity. They and another young farmer have been out in Utah looking at the possibility of transferring out there because they are up against this cost of production problem.

We need that generation in Connecticut. We need those few families to make a difference there. And I think the same is true tenfold in Vermont and the other New England States.

Mr. BRYANT. Let me ask about the other commodities.

The price of cattle has been low until a week or so ago, I think, or better. I have counties in Texas full of people that produce cattle, and most of them have about 50 head. It is a whole lot of small operations. They supplement their other sources of income with it.

Why would it not be a good idea for us to attempt something like this with regard to the price of beef in order to protect the ability of these people to make a living off of raising cattle?

Mr. BLUM. Well, I am a beef and Angus breeder, so I may have a conflict of interest here. But I think the dairy business is different in that you have to get out and milk those cows two and three times a day. It is much more labor-intensive than beef cattle. To a much higher degree I think people that are involved in dairying in New England are there, and they are trying to stay there.

Mr. BRYANT. Anybody else like to comment on any of those questions that I asked? Mr. Smith.

Mr. SMITH. Mr. Bryant, with regard to your first question, I think Commissioner Blum is right. In New England the family farms are still family farms.

My neighbor, he and his wife, they—it is a complete family operation. The hired help are the two daughters. They haven't had a day off in 18 years. I think that is the stereotype, and those are my neighbors.

With regard to your second question, I think the perishability of milk makes the dairy industry relatively—if not unique, pretty close to it in terms of commodities. And, for that reason, milk prices have been regulated since the Depression.

This issue, declining farm prices, has been around ever since milk was sold off the farm. The Federal Government has set up a minimum price structure for that reason.

A comprehensive minimum price structure, as Congresswoman Johnson said, set up regional pricing throughout the country built around the population centers to ensure a stable supply of fluid milk, reflecting the uniqueness of milk. The States also have the authority to regulate prices as well. The Federal Government set the minimum, and States were able to come in and regulate above the minimum. So there was a dual Federal–State regulatory pattern going back 70 years because of the relative uniqueness of milk.

What we are trying to do is get back to that pattern of Federal and State regulation with the Federal program setting a national minimum floor and then the States being able to adjust the minimum as necessary to reflect local conditions.

Mr. BRYANT. All right.

Mr. BLUM. Mr. Chairman, may I ask for permission to add two things to the record? One of them is a letter from the local Farm Credit Bank about some of the statistics, and one of them is an actual farm's annual financial report from New England.

Mr. BRYANT. Very well. Without objection, they will be added to the record.

Mr. BLUM. Thank you.

Mr. BRYANT. Mr. Goodlatte.

Mr. GOODLATTE. Thank you, Mr. Chairman.

Mr. Smith, I guess I go back to what I was talking about before. I am concerned about decoupling what is already—and you are cor-

rect. States do have the ability to regulate. The State of Virginia has a milk board that participates in regulating the price of milk.

But the idea of allowing particular States to band together to create another layer, essentially, of regulation here concerns me for the very reasons the chairman asked about. I think this would spread to other regions, other commodities, and even out of agriculture into other industries beyond the principle of our trying to have open borders and free trade which we established very early on in this country as an important principle.

I understand while I was out of the room you addressed this somewhat with regard to the effective tariff, and I wonder if you would comment on that again.

Mr. SMITH. I think, as I was trying to suggest to the chairman, there is a, you know, very valid political issue in what you are saying. But the—somehow, that question has been translated into this issue of a tariff, and I think if we can get the facts of what the compact would do, then you could consider the political issue.

To just back up one step, what I said before is that the—whichever farmers supply the milk that is regulated will receive the benefit.

So, in contrast to the description of a compensatory payment being paid by, say, a processor from your region into New England, with the proceeds going to the New England farmers, if your processor was selling milk in the New England region—and I think the Senate amendment really spells this out. Farmers who supply that plant would be treated the same as the farmers in the New England region.

So what is really—and this is the pattern of the Federal system. Milk is priced according to where it is sold at retail, not where it is——

Mr. GOODLATTE. Don't we have a problem there of the potential of a New England dairy compact essentially taking over the pricing structure for the country?

Mr. SMITH. Well, as the chairman pointed out, there is a provision in the compact that would allow a lot of other States to get in. And I think the political balance that we are trying to strike was to make it attractive, and it turned out that it made it unattractive. So the Senate amendment would limit this to just six New England States. So I don't think so.

I think that that is one check on what you are saying.

The other is that New England is a pretty small region, and the limitation is the demand for the product. This is only fluid milk. So——

Mr. GOODLATTE. Someone indicated earlier that 3 percent of the Nation's milk supply was produced in New England. What is the percentage of the consumption?

Mr. SMITH. I am not sure. I guess I would assume that consumption patterns are fairly stable, fairly equal nationally. So the 3 percent in New England is both fluid and cheese consumption.

Mr. GOODLATTE. Three percent production. Is that the same for consumption?

Mr. SMITH. Excuse me. Actually, it is about that for New England. New England is fairly stable. We do import milk out of New York, but that is the milk shed that we are talking about.

Mr. GOODLATTE. Milk is changing in several ways. First of all, you are creating, it seems to me, an incentive for farmers in New England to produce more milk. They get a higher price for it than can be obtained elsewhere.

Why isn't there going to be an increase that would result in export, particularly with the onset and availability of BST, which I think is going to rapidly increase production? And a standard size herd—a farmer wouldn't even have to increase the herd or have more farms created. Simply the introduction of BST, which I think is going to rapidly spread in this country, will increase that capacity. If you are getting higher prices, there is even more incentive to do that in New England. So you create something to sell in New England elsewhere, to the disadvantage to producers elsewhere.

Mr. SMITH. Fair question.

I would like here to address the testimony before that somehow the price of Texas milk will be affected.

The compact has an explicit provision for your concern. That problem was anticipated by the States for two reasons: First, to prevent the consequence you spoke of. It is standard that if you raise the price to dairy farmers, they will produce more milk. The flip side is if you lower the price to dairy farmers, they need cash flow.

But your basic thrust is right. If we raise the price, we are going to produce more milk. The compact, as part of any increased price, has to come up—has to implement a program to eliminate the incentive to raise the increased price. So we attempted to deal with that right in the compact.

Then, as part of the House bill, the last section of the House bill now has a provision that the Congress panel spoke to which is if there is increased production—in other words, if your supply incentive program doesn't work, then the commission is going to have to pick up the price of any CCC purchases, which amounts to a gun to the commission' head, because, clearly, the milk would cost $10 to a hundred weight. And if we have an over-order price of a dollar, something like that, there just isn't going to be enough income to pay for the surplus. So we are going to have to deal with that issue.

I think also if you think about what we are trying to do here, which is to increase the pay price to farmers if you increase the supply, then you are going to reduce the pay price to farmers. So you would have competing functions going, if this compact generated surplus milk.

So I think the question is a fair one, but I really think we have dealt with it in a way that would be effective, and that Congress has made sure that it will be dealt with.

Mr. GOODLATTE. The other way that milk is changing is that it is more—it is still something that is difficult to transport great distances, but it is becoming more and more possible with UHT milk, for example. And I am not talking about the stuff where—that was introduced a few years ago where it sits on your shelf and I think tastes pretty awful.

You now have UHT milk that is processed in my district where it has a shelf life of 60 days, tastes exactly the same as the milk

that goes through normal pasteurization processes, and it is served on cruise ships in the Caribbean.

So milk is going to be sold further and further afield, and these regional differences are going to be more pronounced because there is going to be more incentives for people to ship into other areas.

Mr. SMITH. As Representative Reed said, all this compact will do is raise the immediate floor on the marketplace. There is already a Federal floor price. This will raise the regulated floor within a similar design. And if the processor that you speak of would ship the milk into the region able to compete at that regulated floor price, then it would come in. It wouldn't affect the movement of the milk. It just raises the regulated floor price. Because the price goes back to the farmers and the processors competing at the same level as all of the other processors in the region. They are all in an equal, competitive footing. It is competitively neutral.

Mr. GOODLATTE. What is to stop this compact from going into other forms of milk that is more readily transportable—cheese and ice cream and so on?

Mr. SMITH. Express provisions of the compact are it only applies to class I fluid milk.

Mr. GOODLATTE. What does it take to change that?

Mr. SMITH. It would have to come back here. It took 6 years to get to this point, and I think we would rest on our success if we can get to the fluid market. And that is really the local market. There is no desire to get at the rest of the market, because then you are getting into the national market. And this is the local market.

Mr. GOODLATTE. Thank you, Mr. Chairman.

Mr. BRYANT. Do you have—do you contemplate a different price for different types of milk? I mean, you got your no fat, low fat, 2 percent, 1 percent, and all that kind of stuff. Is there going to be a different price? If I am outside the State and I want to bring my product in, am I going to be subject to a series of prices?

Mr. BLUM. This just goes to prices at the farm gate. I mean those would be——

Mr. BRYANT. So we are talking about raw milk?

Mr. BLUM. Right.

Mr. BRYANT. Well, when milk leaves the dairy farm, I guess it leaves the dairy farm in a truck, huh?

Mr. SMITH. It goes into the big bulk tank. The big silver tank is raw milk. And you put it in those big long silver tankers and ship it to the plant in that form, and it is separated into what you are talking about at the plant.

Mr. BRYANT. So we are talking about nobody really being able to have any impact on what you all are doing except somebody who is producing raw milk and shipping it in a truck unprocessed into the six-State region; is that right? Nobody else will be affected?

Mr. BLUM. That is right.

Mr. BRYANT. What if you want to bring in processed milk?

Mr. SMITH. That is where the compensatory payment provision might come in. The compensatory payment provision that the counsel spoke to is for that situation. But because of the cost of shipping packaged milk, there just isn't that much at present that is shipped that way.

Mr. BRYANT. I see.

Mr. BLUM. The compensatory payment doesn't in those cases go to New England. That goes to the producer of the milk.

Mr. BRYANT. Yes.

Mr. ENGLISH. Mr. Chairman, I think that does raise the issue that we have been trying to discuss with respect to what it does and what it is going to prevent.

There are processors right now in northern New Jersey who do ship into New England. They clearly do ship into Connecticut. They clearly ship into western Massachusetts. Those processors right now pay the Federal order price for the milk based upon where they are physically located, where their plant is located in New Jersey.

If this passes, they would have to pay their farmers the additional sum of money effectively that this would increase. The problem with this is this prevents competition. The processor in New Jersey who, but for this compensatory payment would have an economic incentive to ship into the New England area, will be deprived of that economic incentive because the compact will take it away and say you must pay the dairy farmer *x* amount.

Now, that may be fine for the dairy farmer except guess what that means? The processor is not going to be able to ship into New England, and so the dairy farmer will effectively never get that money. The market just won't be created.

That is the point of the economic discussion within the Supreme Court case. That is why Justice Cardoza said in an earlier case, again involving the Northeast, that this concept would bring ruin to the Union. That is what he says. This kind of concept. That is why he found it to be unconstitutional.

Now, it may have been illegal in that instance because it was unconstitutional there. The point was the economics of it. We urge you to read the Supreme Court decision. Because beyond the legal point, the political point, and the economic point is just as valid. It truly is a tariff. It truly will prevent that processor from New Jersey, the processor from Pennsylvania, the processor from anywhere outside New England from trying to obtain a market within New England. It will effectively exclude it.

Mr. VETNE. Mr. Chairman, if I might elaborate, the Federal Government keeps data in the federally regulated markets on where bottled milk is coming from. And the New England data show that, currently, there is bottled milk coming into New England from Michigan. There has been bottled milk coming into New England from a plant in Savannah, Georgia. There is regularly bottled milk coming into New England from plants in New Jersey.

All of that bottled milk under this compact would be charged a compensatory payment. And if it weren't for that compensatory payment and the need for that, Mr. Chairman, members of the committee, proponents wouldn't be here and we wouldn't be here. The compensatory payment, the tariff barrier, is essential to make this work, to protect, to draw a line, a fence around New England. The charge would be against the processor for that compensatory payment.

And, quite frankly, it makes no difference to that processor and the barrier is no less if the New England Compact Commission au-

thorities take that processor's money and pay it to somebody else. It is not a wash. The barrier doesn't go down simply because that money is paid to the farmers at the point of origin. The charge is still against that handler, that processor in Michigan, in Georgia, in New Jersey, wherever the milk might come from. That is why we are here.

Mr. GOODLATTE. Or a New England processor that buys from out of the area, is that correct?

Mr. VETNE. The compensatory payment could also be on both. If a New England processor buys milk from Wisconsin or Ohio, not part of the pool, the New England processor would be charged a compensatory payment on that nonregular source.

Mr. BRYANT. I thought that you had just told me that the compensatory price is just on the raw milk coming from the farm? Did I misunderstand you a moment ago?

Mr. ENGLISH. The party who has to pay for it, though—the processor. It is on the—that is who is going to pay for it.

Mr. SMITH. The pooled milk is raw milk. The provision for compensatory payments would be for the packaged milk which is, I believe, a marginal amount of milk marketed in New England. So the—but the pooling provisions are the basic regulatory function here, not the compensatory payments.

I am not quite sure that I follow the argument that a tariff—pooling is a tariff, because that is the way the Federal order works. The dealers here are all working under this same system. We are not doing anything new. We are just trying to duplicate for New England the Federal system, which puts all of the dealers at an equal competitive footing. So we have a rift here.

Mr. BRYANT. What do you say to that?

Mr. ENGLISH. It is completely different. Because, right now, if I am a New Jersey processor and buying milk, I am paying milk at the New Jersey price, and I can compete by going into the Federal market in New England.

The New England price happens to be higher than the New Jersey price. I am able to take advantage of the fact that the Federal Government has said, yes, in order to draw forth an adequate supply of milk in New England there needs to be a higher price in Boston than there is in New Jersey. And in order to get that, we are going to have a slightly higher price for fluid milk for Boston.

But, as a result of that, in order to help it draw, the Federal Government's program sets it up such that a processor located in New Jersey can come into New England effectively and compete in New England based upon a slightly smaller—not a very much smaller, but a slightly smaller price. This will take away all of that.

The money right now goes to the New Jersey—what is called the New York-New Jersey pool. It is a completely different concept. It is not a matter of semantics. I wouldn't be here testifying for a Texas processor if it was a matter of semantics. This matter is a matter of great concern because it will change the entire landscape of the dairy industry.

Mr. BRYANT. Let me just ask you a parochial question about Texas. Why does anybody in Texas really care about this either way? You work for a company that processes milk, and I assume

most of what you buy is produced right around you there, is that right?

Mr. ENGLISH. Almost all of it is brought into Texas. Even the milk that we produce in Louisiana.

We have two things here. We have a stair-stepping effect in milk. Milk really is a national product. If there is a loss of dairy market to a New Jersey processor, that is going to stair step down. They are going to move farther south and farther west. They have to look for a location to sell their milk. They are going to end up in our backyard. They are going to be there tomorrow.

But, more importantly, the point that I made—and I maintain that no matter how the supply management would work, the fact of the matter is that, overall, dairy farmers outside the region will be affected, and dairy farmers in Texas will be affected.

I do have an article—I think a copy was provided to Ms. Jenkins and I would like to ask that it be added to the record.

It is an article called, "The Market Will Prevail," in Farm Life, February-March 1993, written by the general manager of Eastern Milk Producers Co-op, a cooperative of dairy farmers in New York and Pennsylvania. And they oppose the co-op—oppose the compact. And many of the rationales we are talking about today are in that article.

And so the fact of the matter is that once you get this kind of regional protectionism in New England it is not long before it is going to be in Texas.

Mr. BRYANT. Mr. Blum—Commissioner Blum, what about that? I don't want to put pressure on my producers.

Mr. BLUM. I think this line of argument ignores the fact that the competition in this case is processors within the region, and they are affected by this—the Hoods and the Sealtests and Guida-Seibert and Garelick. All of the dairies in New England are paying the higher price. So that, to the extent that New Jersey is availing itself of that market, they are on an equal footing. They are not losing out competitively to processors within the New England region.

Mr. BRYANT. What do you——

Mr. ERICKSON. Mr. Chairman, I would like to comment.

I am from Iowa, and Minnesota passed a law on a single State basis that was quite similar to this, and it was implemented until it was ruled illegal. It was the biggest mess that ever hit.

If I wanted to sell milk from my Iowa plant into Minnesota, I had to pay a compensatory payment. This stifled competition. It raised the price of milk considerably in Minnesota and it was a mess. I would hate to see something like this happen more broadly.

The other misconception that we have is that it is not going to affect class II and class III milk—that is milk that is used for cottage cheese and cheese. That probably is not true, because probably what is going to happen is the Federal order is going to be voted out. The individual farmers have the option of voting out the Federal order. If that happens, the compact will take over the pricing of all classes of milk, not just class I or beverage milk. I see that almost as a certainty of happening.

Mr. GOODLATTE. Mr. Chairman, would you yield?

Mr. BRYANT. Sure.

Mr. GOODLATTE. On that very point, I wonder if Mr. Blum or Mr. Smith might comment on page 14 and page 15, the equitable farm prices, section 9, subsection (c). It says, a commissioning market order shall apply to all classes and uses of milk.

Mr. SMITH. The scenario that has been described, if the market order system were voted out for regulatory coherence, the commission would have been authorized to price all classes of milk. Mr. Chairman, you raised this question before.

Mr. GOODLATTE. So you would not have to come back to us under those circumstances?

Mr. SMITH. Well, the Senate Judiciary Committee addressed this very issue and put in an amendment that would eliminate this backup authority.

And my group is—of all of the amendments the Senate did, they are most concerned about this. They don't perceive the problem that has been described. However, they have conceded and acceded to the Senate amendment so that we would delete that provision, Mr. Goodlatte, and the commission's authority, in any case, would be limited to just the fluid milk.

So according to an amendment that counsel has, that authority—that backup authority of the commission is gone, according to the Senate amendment.

If I could just respond to one—the New Jersey processor who is now shipping into New England.

According to the way the Federal order works, if the volume of sales gets to a certain point, that plant will be pooled in New England subject to the New England price. So half the story was told to you but not the complete story—the way the New England order works.

Mr. BRYANT. What will complete the story?

Mr. SMITH. There is a volume provision in the Federal order. You may be located outside of the geographic area of the New England order and be pooled in a separate order, and for your sales into the New England order, you would be subject to the price where you are located. But if your sales into the other order reach a certain threshold, then you are subject to the higher price at that point.

Mr. BRYANT. Well, what he is saying was that somehow this compact is going to create a barrier so that the New Jersey guy has to start selling his milk in a different direction, and the guy below him does the same thing, and pretty soon Texas has more people trying to sell milk in it than it does right now, driving the price down for the Texas producers. Why would that happen?

Mr. SMITH. Fluid milk doesn't travel very far, so there is obviously a disagreement on that one.

But the pooling, the way the Federal order works—and your new milk may change the rules of the game. But under the existing structure of the market, packaged milk doesn't move great distances, at least not in the New England order.

I mean, we have a milk shed that extends into western New York, and that is the basic milk shed for New England. What the compact is trying to do is stabilize the milk shed and all the farmers in the milk shed.

I think the commissioner—if I might, the local processors supported this measure. If they didn't support it, they decided to take a neutral stance.

There is one letter in my testimony—I tried to give you some of the letters of support from the Governors, and one letter from one of the large processors in New England is in support of this for the purpose of stabilizing the milk supply.

Mr. BRYANT. How did you pick the six States? Why isn't New York in this group?

Mr. SMITH. The Federal order one is the six New England States. So there is already a commonality in the Federal order. Like I said, we are trying to take the Federal model, a competitive neutral hearing for the processors and the farmers. I mean, that is the goal here. Just could it be interstate.

Mr. ERICKSON. Mr. Chairman, I would like to make one point. Milk has moved in the last year from Iowa, Wisconsin, and Missouri down to Florida. So when we say that milk doesn't move very far, I would have to disagree with that statement.

Mr. ENGLISH. I guess, Mr. Chairman, the fact of the matter is that the processors in New England may gain a benefit from this. As we see the tariff, preventing competition from coming outside, if they thought it through—and they may very well have.

If I were a processor located in New England I would love this bill because this would mean the competition I am currently getting from New Jersey or from New York for milk that is slightly less expensive can no longer happen because those people have to pay the exact same amount I am paying. It takes away the competition.

So I don't think it is a surprise that we don't see processors here from New England.

As to the movement of packaged milk, there is a plant located in Clovis, NM, that sells up in New Orleans, into Colorado, into Phoenix, AZ. Milk in packaged form, especially down in the Texas area, moves very large distances.

Mr. BRYANT. Mr. Blum, you wanted to jump in.

Mr. BLUM. I would like to say, on the flow of milk, I think that if this consideration is going to go on you ought to get some volume studies about this. Because I think we are talking about the preponderant milk supply there.

As far as this about the New England processors supporting it, I think they are supporting it as citizens of New England and not as processors. I have talked with Keller at Hood and Bernon at Garelick, and Mike Marcus is not an adherent of the compact. As a member of MIF, he has a lot of business in both New England and in New Jersey.

So I don't think that this is—in any sense could be construed as protection for the New England processors. If you are going to have a tariff analogy, you got to have a dumping analogy, and I don't think those are apposite.

Mr. GOODLATTE. Mr. Chairman, I—the only, last question I would ask, being a new member of this committee, is there any precedent for this? Is there any other type of interstate compact where the economy is going to be regulated? Has this come through here before?

Mr. BRYANT. All the staff could come up with is a low-level nuclear waste compact.

Mr. ENGLISH. We would rather not be compared to that, Mr. Chairman.

Mr. BRYANT. One of my questions was going to be to ask if they were aware of any other compacts like this.

Mr. SMITH. There is a compact in the Pacific Northwest that does comprehensive energy planning—comprehensive conservation energy planning. Part of the compact is an assessment on the rate base for the four States which funds the study, and there is a commission set up for the—for the Pacific Northwest States, and the development of new energy programs in the Pacific Northwest is governed by this interstate compact.

You know, in terms of dollars and economic impact, it may not be structurally the same as this, but the economic impact of that compact is dramatically beyond anything that this would even touch.

Mr. BRYANT. It doesn't sound as though, however, it is, strictly speaking, a commercial compact. It sounds like a cooperative.

Mr. SMITH. It doesn't price a commodity. In that sense it is not the same. But it does dictate to industry how they are going to make investments in terms of their future energy planning.

Mr. BRYANT. Well, I am out of questions. Do you have any more?

Mr. GOODLATTE. No, I don't.

Mr. BRYANT. Anyone like to add anything?

Mr. SMITH. Could I just suggest—this discussion about how much milk moves strikes me as lawyers arguing about how many angels can dance on the head of a pin. But the milk business is regulated within an inch of its life, and we can submit the documentation of just how much milk in New England has moved.

Mr. BRYANT. We would welcome any supplementary information.

[The information follows:]

[[illegible] in the record]

NEW ENGLAND MARKET STATISTICS - 1993

INTERMARKET SHIPMENTS OF FLUID MILK PRODUCTS 1993

RECEIPTS FROM ORDER NO. 2 3/

	Class I			Class II	Class III & III-A		
	Packaged 1/	Bulk	Total	Bulk	Packaged 1/ 2/	Bulk	Total
January	13,575,877	*	*	*	0	113,600	113,600
February	12,366,294	0	12,366,294	*	0	0	0
March	14,188,156	0	14,188,156	*	0	0	0
April	12,850,959	0	12,850,959	0	0	*	*
May	12,602,622	*	*	179,120	0	850,709	850,709
June	12,254,481	0	12,254,481	*	0	*	*
July	10,619,547	*	*	*	0	604,508	604,508
August	11,350,634	0	11,350,634	0	0	511,989	511,989
September	12,613,247	*	*	*	0	492,584	492,584
October	12,818,077	*	*	*	0	*	*
November	12,652,871	0	12,652,871	*	0	*	*
December	12,623,741	0	12,623,741	0	0	*	*
Total	150,716,306	*	*	*	0	*	*

SALES TO ORDER NO. 2

	Class I			Class II	Class III & III-A		
	Packaged 1/	Bulk	Total	Bulk	Packaged 1/ 2/	Bulk	Total
January	8,791,548	*	*	0	81,186	9,155,602	9,236,788
February	8,135,583	*	*	*	12,382	8,274,892	8,287,274
March	9,435,939	*	*	*	85,276	4,535,187	4,620,463
April	12,755,849	*	*	*	10,182	4,881,231	4,891,413
May	12,695,818	*	*	0	9,787	6,585,650	6,595,437
June	11,826,681	*	*	1,758,514	8,686	9,143,593	9,152,279
July	12,491,281	0	12,491,281	0	13,220	3,571,383	3,584,603
August	11,796,682	*	*	*	6,717	3,113,518	3,120,235
September	12,635,702	*	*	*	16,301	4,797,229	4,813,530
October	12,772,337	*	*	*	10,077	5,658,396	5,668,473
November	12,691,842	1,264,739	13,956,581	1,024,071	10,656	6,357,660	6,368,316
December	13,407,119	*	*	384,962	13,799	3,729,301	3,743,100
Total	139,436,181	*	*	*	278,269	69,803,642	70,081,911

1/ Packaged includes any fluid milk products in consumer packages, either transferred to plants or distributed on routes in the other order.
2/ Pursuant to Sec. 1001.44(3)(i) and the corresponding step of Sec. 1001.42(b)(1).
3/ Receipts from Order Nos. 4 and 36 and Sales to Orders 4,11,33, and 36 are restricted information.
*Less than three shipping handlers or less than three receiving handler.

TOTAL CLASS I UTILIZATION, BY ALL SOURCES
(In Pounds)

	In Marketing Area			
	Pool Handlers	Producer-Handlers	Partially Regulated Handlers [1]	Total
January	211,325,201	1,986,866	15,184,902	228,496,969
February	196,018,924	1,897,761	13,650,459	211,567,144
March	227,908,598	2,094,645	15,278,127	245,281,370
April	214,475,346 [2]	2,001,940 [2]	13,796,177	230,273,463 [2]
May	210,999,981	1,901,788	13,816,806	226,718,575
June	201,338,994	1,897,256	13,384,078	216,620,328
July	206,499,107	1,842,638	13,074,376	221,416,121
August	205,320,762	1,869,050	12,378,693	219,568,505
September	216,321,835	1,936,918	13,435,505	231,694,258
October	219,751,603	2,003,176	13,793,561	235,548,340
November	217,162,415	1,981,352	13,506,679	232,650,446
December	223,737,847	2,061,967	13,961,356	239,761,170
Total	2,550,860,613	23,475,357	165,258,719	2,739,594,689

	In Outside Markets			
	Pool Handlers	Producer-Handlers	Total	Total Class I All Sources
January	24,847,325	153,833	25,001,158	253,498,127
February	22,349,541	148,206	22,497,747	234,064,891
March	22,996,251	138,391	23,134,642	268,416,012
April	18,751,801	124,533	18,876,334	249,149,797 [2]
May	18,283,103	163,227	18,446,330	245,164,905
June	17,205,733	127,227	17,332,960	233,953,288
July	21,085,567	124,963	21,210,530	242,626,651
August	19,985,188	172,740	20,157,928	239,724,433
September	21,312,278	131,407	21,443,685	253,137,943
October	21,439,240	139,562	21,578,802	257,127,142
November	22,048,805	95,035	22,143,840	254,794,286
December	21,619,327	134,742	21,754,069	261,515,239
Total	251,924,159	1,653,866	253,578,025	2,993,172,714

1/ Includes exempt distributing plants pursuant to Section 1001.8(a) and other Federal order plants with route disposition in marketing area.
2/ Revised.

Mr. VETNE. I would like, Mr. Chairman, to make one comment.

An assessment of how much milk moves into New England now when the price in New England and New York are comparable is not a good measure on what milk might be attracted if New England prices were much higher but kept out of New England because that higher price also had a barrier going along with it.

But the proponent witness over there asked for a dumping analogy. I can give you a very short one.

When the State of Maine enacted its own milk price regulation, the State of Maine and producers arranged it so that Maine producers received and retained the benefit of higher prices for milk going into the bottle and dumped their surplus into the Federal pool next door. So that all of the producers in New England had to suffer the burden of the lower price for surplus products. That would happen in my opinion here.

And every hundredweight of milk, every pound of powder that is produced in New England, because of the compact—that wouldn't have been produced without the compact—is going to be a pound of milk that the Commodity Credit Corporation has to purchase, and is going a be a pound of milk or powder that is lost to markets in the Midwest and the West. It will depress prices for Texas producers, for Virginia producers, for Pennsylvania producers, for everybody.

Thank you.

Mr. BRYANT. Is Mr. Clayton still in the room? I would like to ask him if he agrees with you. We will ask him that in writing.

Thank you very much for being here today. The hearing is adjourned.

[Whereupon, at 12:33 p.m., the subcommittee adjourned.]

APPENDIX

Material Submitted for the Hearing

Farm Credit Bank of Springfield
Springfield Bank for Cooperatives

Post Office Box 141
Springfield, Massachusetts 01102
413/786-7600

August 1, 1994

The Honorable John R. H. Blum, Commissioner
Connecticut Department of Agriculture
State Office Building, Room 273
165 Capital Avenue
Hartford, CT 06106

Dear Jack:

Attached are the figures that you requested. They are based on the Agrifax farm records of 53 dairy farmers who would be representative of Connecticut and the entire southern order 1 milkshed.

Actual results for 1993 indicate that the average farm business barely broke even in terms of being able to fully meet its cash flow commitments. At least one-fifth of farms were experiencing severe financial stress.

Most industry forecasters anticipate lower milk prices in 1995. USDA, for example, is forecasting a range of 25 cents to $1.25 per cwt. lower than this year.

A 50-cent decline in the milk price would put the average Connecticut dairy farm in a stressed situation of being unable to pay a significant amount of its financial commitments. Two-fifths of farm businesses would experience major or severe financial stress and another one-fifth would experience some mild stress.

A $1 decline in milk price has even more severe consequences as would be expected. It would stress the large majority of dairy farm businesses to some extent with only the very best being able to cash flow their way through.

Forecasting rates of dairy farm failure is highly speculative at best and I am not sure it is constructive. However, it would be fair to conclude that a year of prices at 50 cents per cwt. lower would moderately accelerate the 5-year trend of dairy farm attrition. With a year at a dollar lower, there would be a significant acceleration of the 5-year trend due to both forced liquidations and farmer discouragement.

84-658 0 - 94 - 6

The Honorable John R.H. Blum, Commissioner
August 1, 1994
Page 2

I hope this is helpful to you. Good luck at the hearing.

Sincerely,

James N. Putnam II
Vice President
Director of Business Research

JP/mf
Clint Chartar, CEO SNE
Roger Allbea

Range of Financial Strength for Southern New England Dairy Farms[1]

1993 Actual Results	Top 20% Profit	2nd 20% Profit	3rd 20% Profit	4th 20% Profit	Bottom 20% Profit	Average
	Per Cwt.					
Actual Price Received	$14.05	$13.64	$13.53	$13.58	$14.21	$13.78
Break-Even Price Required[2]	12.92	13.07	13.36	14.11	16.08	13.87
Margin	$ 1.13	$ 0.57	$ 0.17	$-0.53	$-1.87	$-0.09
Financial Situation	Strong	Good	Weak	Some Stress	Severe Stress	Weak
With 50¢ Decline in Price[3]						
Margin	$ 0.63	$ 0.07	$-0.33	$-1.03	$-2.37	$-0.59
Financial Situation	Strong	Okay	Some Stress	Major Stress	Severe Stress	Some Stress
With $1.00 Decline in Price[3]						
Margin	$ 0.13	$-0.43	$-0.83	$-1.53	$-2.87	$-1.09
Financial Situation	Okay	Some Stress	Some Stress	Severe Stress	Severe Stress	Major Stress
Number of Farms	10	10	10	10	13	53

[1]Based on a sample of 53 farms from Southern New England and adjacent counties in New York State.

[2]Minimum milk price needed to cover all operating expenses, debt payments, and family living expenses. Does not include return on investment or depreciation.

[3]The U.S. Department of Agriculture's June forecast is for milk prices to average $0.25 to $1.25 per cwt. lower in 1995. (*World Agricultural Supply and Demand Estimates*, World Ag Outlook Board, USDA, June 9, 1994.

SOURCE: Internal data from the *Northeast Dairy Farm Summary* data base prepared specially for Commissioner John Blum.

1993
My Farm Report

Prepared for:

NYE, JOHN B.

Member ID Number:

0128045411874

Prepared by:

Financial Services
Southern New England Farm Credit, ACA

1993 My Farm Report

INTRODUCTION

There are many factors that determine the efficiency and profitability of your farm business. Profitability is not a matter of excelling in one area, but rather better–than–average management of most aspects of the farm business. One way to identify strengths or weaknesses of your business is to compare it with other businesses in your area. Your MY FARM report is not intended to be a full analysis of your farm. However, we hope it will assist you in making management decisions.

GLOSSARY

Net Farm Income

Farm profitability in terms of cash flow. It is equal to:

Cash Receipts – Adjusted Cash Operating Expenses

Adjusted Cash Operating Expenses

Cash farm operating expenses adjusted to reflect 12 months of operation and to remove the effect of tax planning. Adjustments account for changes in supply inventories, account payable, and prepaid expenses. Operating expenses do NOT include family living costs or capital expenditures

Net Earnings

An accrual measure of farm profitability. It is equal to:

Net Farm Income
+ Change in Accounts Receivable and Production Inventories
+ Net Nonfarm and Noncash Income
– Depreciation
– Family Living Expenses and Taxes

Liquidity

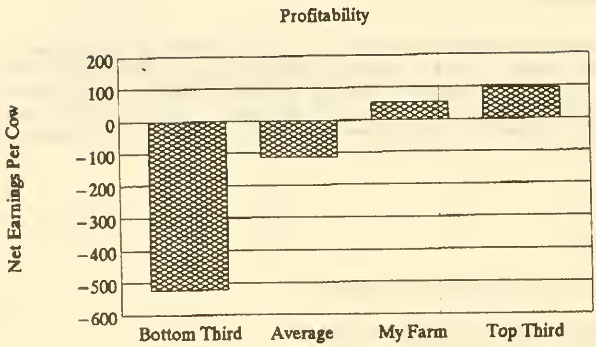
This term refers to a business's ability to convert assets into cash in the event (such as a disruption in milk production) it is needed to cover current operating expenses and debt payments.

1. *Working Capital = Current Assets minus Current Liabilities*
2. *Current Ratio = Current Assets divided by Current Liabilities*

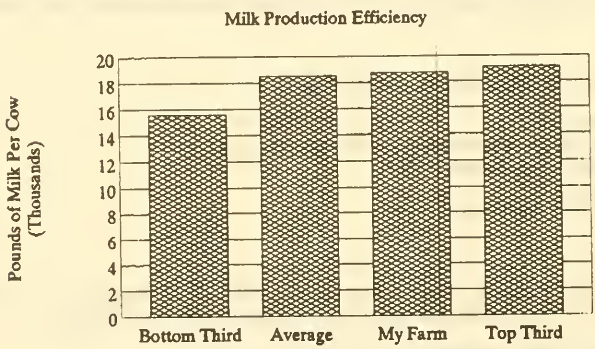
84-658 230

NYE, JOHN D.

1993 My Farm Graphs

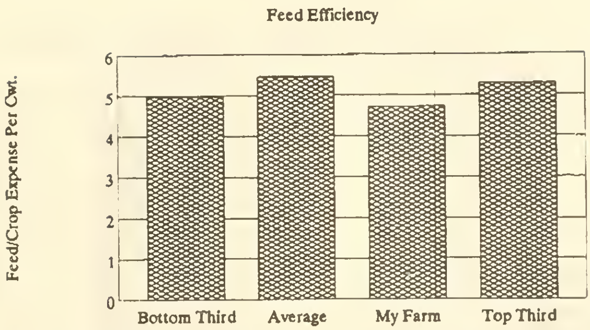


Net earnings is a combination of business factors.

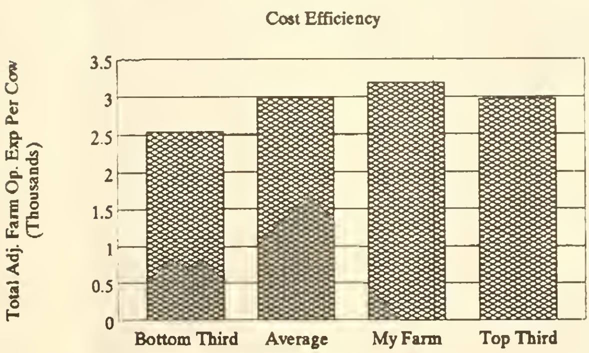


In general, a high level of milk production per cow is an indication of efficiency because the overhead cost can be spread over a higher volume of salable product. However, high milk production per cow does not guarantee farm profitability because operating costs (e.g., feed, crop, and labor expense) could also be high in order to achieve the high production.

1993 My Farm Graphs



In general, the more profitable farms will spend less on feed and crops per cwt. of milk sold than the less profitable farms. If your farm is well above average, it would suggest that feed and crop expenses need further analysis.



If your total adjusted farm operating expense per cow falls near the high end of the scale, then further analysis may be needed to determine the individual expenses responsible (e.g., feed, labor, and crop or interest expense). Typically, feed/crop expense is 35 to 40 percent of the toal expenses and hired labor expense is approximately 15 percent of total expenses. However, these general rules of thumb can be misleading if analyzed alone.

1993 Dairy Farm Benchmarks
Comparative Earnings Statement

Dollars Per Cow

	Benchmark	Top Third	My Farm	Difference
Number of Farms	9	9		
Average Number of Cows	205	106	350	244
Dairy Products	2,597	2,791	2,586	(205)
Crops	7	19	0	(19)
Calf Sales	7	20	0	(20)
Cow Sales	105	166	110	(56)
Other	266	319	529	210
Total Cash Farm Income	2,981	3,314	3,226	(88)
− Livestock Purchase	2	0	0	0
+ Livestock Inv Change	74	108	(29)	(137)
− Resale Purchases	7	0	8	8
+ Change in Inv for Sales	0	0	0	0
+ Change in Feed/Crop Inv	(33)	(48)	60	108
+ Accts Receivable Change	4	(19)	61	80
Value Farm Products (b)	3,016	3,355	3,310	(45)
Cash Expenses				
Chemicals & Spray	33	51	0	(51)
Feed Purchases	905	836	881	45
Fertilizers & Lime	51	84	0	(84)
Freight & Trucking	115	133	28	(105)
Gasoline, Fuels & Oil	63	76	107	31
Insurance	83	82	17	(65)
Interest	103	143	0	(143)
Labor	402	470	387	(83)
Machine Hire	66	29	65	36
Rent	106	89	119	30
Repairs	163	161	271	110
Replacement Lvstk	9	20	0	(20)
Seeds & Plants	23	42	0	(42)
Supplies	105	135	0	(135)
Taxes	51	33	53	20
Utilities	72	88	53	(35)
Vet, Med & Breeding	62	91	0	(91)
Other Farm Expenses	272	102	971	869
Accrual Exp. Adj	29	4	75	71
Depreciation (c)	280	303	163	(140)
Total Adjust Farm Oper (d)	2,993	2,971	3,189	218
Net Farm Income (a−d+c)	268	646	200	(446)
Net Farm Earnings (b−d)	23	384	121	(263)
+ Net Nonfarm Income	16	25	0	(25)
− Family Living & Tax	153	315	67	(248)
Net Earnings	(114)	95	54	(41)

NYE, JOHN B.

1993 Dairy Farm Benchmarks
Comparative Balance Statement

Dollars Per Cow

	Benchmark	Top Third	My Farm	Difference
Number of Farms	9	9		
Average Number of Cows	205	106	350	244
ASSETS				
Cash	11	64	3	(61)
Accts Receivable	197	173	240	67
Produce for Sale	0	0	0	0
Produce for Farm Use	441	597	504	(93)
Supplies/Prepaid Exp	22	50	0	(50)
Other Current Assets	155	62	14	(48)
Total Current Assets	826	947	761	(186)
Dairy Livestock	943	1,278	267	(1,011)
Machine and Equipment	1,033	1,758	857	(901)
Other Intermed Assets	753	763	1,155	392
Total Intermediate Assets	2,729	3,799	2,279	(1,520)
Farm Real Estate	5,511	4,635	837	(3,798)
Other Fixed Assets	0	0	0	0
Total Fixed Assets	5,511	4,635	837	(3,798)
Total Assets	9,066	9,380	3,876	(5,504)
LIABILITIES & NET WORTH				
Accounts Payable	89	103	72	(31)
Farm Credit S.T. Loans	56	76	124	48
Curr. Por. I.T. Loans	115	87	272	185
Curr. Por. L.T. Loans	8	13	6	(7)
Other Current Liabilities	0	6	0	(6)
Total Current Liabilities	268	285	473	188
Farm Credit I.T. Loans	708	844	309	(535)
Other I.T. Loans	186	118	474	356
Total Intermediate Liabilities	893	962	782	(180)
Farm Credit L.T. R/E	306	222	0	(222)
Other L.T. Loans	428	845	450	(395)
Total Long-Term Loans	735	1,067	450	(617)
Total Liabilities	1,896	2,314	1,706	(608)
Net Worth	7,170	7,066	2,171	(4,895)
Total Liabilities & Net Worth	9,066	9,380	3,876	(5,504)
Percent Net Worth	79.0%	75.0%	56.0%	-19.0%
Return on Assets*	(0.12)	2.57	1.45	(1.12)
Return on Equity**	(1.60)	1.38	2.51	1.13

*ROA = ((Net Farm Earnings + Intst - Family Liv.)/Ave Farm Assets)*100.
**ROE = ((Net Farm Earnings - Family Liv.)/Ave Farm Equity)*100.

NYE, JOHN B.

1993 Dairy Farm Benchmarks
Business Evaluation Factors

	Benchmark	Top Third	My Farm	Difference
Number of Farms	9	9		
Average Number of Cows	205	106	350	244
Number of Bred Heifers	76	56	76	20
Number of Other Yngstk	68	39	145	106
Percent Yngstock/Cows	70.2%	89.7%	63.1%	-26.6%
Total Crop Acres	551.1	403.1	1000.0	596.9
Crop Acres / Cow	2.7	3.8	2.9	(0.9)
Tons of Hay / Acre	2.4	2.6	2.5	(0.1)
Tons Corn Silage/Acre	16.9	17.8	14.1	(3.7)
Pounds of Milk Sold	3,792,168	2,029,171	6,540,380	4,511,209
Milk Sold / Cow	18,539	19,163	18,687	(476)
Worker Equivalents	4.0	2.9	6.5	3.6
Milk Sold / Worker	945,852	693,514	1,006,212	312,698
Cows / Worker	51.0	36.2	53.8	17.6
Crop Acres / Worker	137	138	154	16
Feed Cost / Cow	905	836	881	45
Percent Feed of Mlk Inc	34.6	29.2	34.1	4.9
Feed and Crop Exp/Cow	1,012	1,013	881	(132)
Labor and Family / Cow	555	784	453	(331)
Cash Farm Exp/Cwt.	14.64	13.92	16.19	2.27
Ave Farm Debt / Cow	1,874	2,349	1,590	(759)
Working Capital	114,070	70,061	100,774	30,713
Current Ratio	3.1	3.3	1.6	(1.7)
Cash from Oper*/Farm	54,491	50,627	70,114	19,487
Net Nonfarm Inc/Farm	3,358	2,696	0	(2,696)
Capital Sales / Farm	944	789	0	(789)
Total Cash Avail for Debt Pym and Capital Purch/Farm	58,794	54,112	70,114	16,002
Capital Purchases / Farm	27,443	26,738	52,300	25,562
Actual Milk Price / Cwt (a)	14.01	14.56	13.84	(0.72)
Cash Required / Cwt**	16.71	16.88	17.77	0.89
– Other Income / Cwt***	2.19	2.90	3.42	0.52
Break-Evn Mlk Price/Cwt(b)	14.52	13.98	14.35	0.37
Cash Margin / Cwt (a-b)	(0.52)	0.58	(0.51)	(1.09)

*Cash from Operations = Net Cash Farm Income + Interest Expense – Family Living.
**Cash Required = Operating Expenses + Family Living + Principal Payments.
***Other Income = Cattle Sales + Crop Sales + Other Nonfarm or Farm Income.

Cost of Production Unchanged

The net cost of production for the average dairy farm in the summary was $13.32 per cwt. in 1993 (Figure 4). This was virtually unchanged from the past 2 years as dairy farmers continue to operate in a competitive business climate. Due to annual fluctuations and changes, however, comparing multi-year cost of production averages is more appropriate. The most recent 3-year average ($13.32) cost of production is 4 percent lower than 1988-90 ($13.81) and very similar to 1985-87 ($13.3?). Generally, Northeast dairy farmers have done a good job increasing productivity as a means of containing costs.

Figure 4.

The Cost of Producing Milk–Accrual Basis

	1990	1991	1992	1993
	Dollars Per Cwt.			
Feed	4.33	3.65	3.89	3.86
Labor	1.86	1.78	1.78	1.82
Interest	1.07	1.05	.87	.77
Marketing	.55	.56	.65	.65
Crop	1.09	.83	.90	.84
Other	5.25	4.86	4.95	5.00
Adjusted Cash Operating Expenses	14.15	12.73	13.04	12.94
+ Depreciation	1.33	1.32	1.28	1.38
+ Family Living	1.43	1.35	1.31	1.20
Totals Costs	16.91	15.40	15.63	15.52
– Nonmilk Income*	2.34	2.02	2.36	2.20
Net Cost of Production**	14.57	13.38	13.27	13.32

*Nonmilk income includes accrual basis cattle, crop, and other income.
**Before any return on equity. Each 1% return on equity would be equivalent to another 28 cents added to the net cost of production for 1992.

-- Include in the Record --

The need to increase the pay price to Northeast dairy farmers is a given, but determining the most rational way to go about it is not such a simple task.

Eastern has made its choice to pursue self-help avenues at the national level.

The market will prevail

by Michael Donovan

General Manager – EASTERN MILK PRODUCERS COOP

In an open letter recently published in *Country Folks*, Eastern's position and intentions relative to the Northeast Compact are placed in question. The writer, an NFO member from Vermont, implies that Eastern doesn't care about the pay price received by its members, and that the cooperative is more concerned with supplying its customers with "large volumes of milk at a low price".

The author, though, is seriously and blatantly misinterpreting our position.

In fact, Eastern's position is quite clear and simple – manipulating the market is detrimental to all dairy farmers.

Those supporting the concept of a $16.00 blend price from a Dairy Compact apparently are ignorant of the laws of supply and demand. With Class I sales dropping in the Northeast, adding $.25 to the cost of a gallon of milk might not be the best medicine for an ailing dairy economy.

We don't fault our critic from Vermont for wanting a high price for his milk, but we certainly do question his logic and wisdom in thinking that you can fool "Mother Nature". Supply and demand are the factors that will rule milk prices received by farmers in the 1990's – not wild schemes and wishful dreams.

A bogus market of inflated Class I prices, with the current surplus of raw milk throughout the national market, is not only naive, but is extremely risky.

As an industry we risk:

- the continuation of the federal milk marketing order program by attempting to force prices substantially above those within the orders.
- the Class I differentials that Eastern's economist and others successfully raised in the late '80's.
- loss of market to lower priced fluid milk and manufactured dairy products from outside our marketing area.

The industry's greatest loss, though, would come when public confidence and support erode, because of a perception of us as price gougers during a period of surplus. The most overwhelming disadvantage of the Compact would be the loss of unity among the dairy

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Co-op Current

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industry when price inequities would begin to sprout.

The need to increase the pay price to Northeast dairy farmers is a given, but determining the most rational way to go about it is not such a simple task.

Eastern has made its choice to pursue self-help avenues at the national level. Lew Gardner, Eastern's president, is actively involved in a National Milk Producers Federation task force set up to pursue this objective.

Just last year, Lew led a delegation to Moscow – the success of which caused the U.S. Department of Agriculture to reluctantly release dairy surplus to the former Soviet Union, and authorize additional DEIP (Dairy Export Incentive Program) subsidies in order to encourage expanded exports. These actions, triggered partially by Eastern initiatives, boosted the U.S. milk pricing at least $.50/cwt., higher in 1992 than it would have been otherwise.

Eastern's work will never be finished. We're always searching for sensible answers in the quest for higher prices for our members' quality milk.

We're not so hasty to jump on the bandwagon when a quick and easy, or a band-aid solution comes along. A sound approach and careful strategizing on an enlarged scale is a prerequisite to higher prices. An oblivious attitude toward supply and demand will only worsen the problem in the long run.

Eastern's work will never be finished. We're always searching for sensible answers in the quest for higher prices for our members' quality milk.

Addendum to Testimony of Daniel Smith on H.R. 4560

NEW
ENGLAND
GOVERNORS'
CONFERENCE, INC.

76 Summer Street
Boston, Massachusetts 02110-1226
(617) 423-6900 • FAX (617) 423-7327

February 4, 1994

Honorable Michael Espy
Secretary, U.S. Department of Agriculture
14th Street and Independence Ave., SW
Washington, DC 20250

Dear Secretary Espy:

We write to ask for your support of the Northeast Interstate Dairy Compact during the upcoming Congressional approval process.

The Dairy Compact has been enacted into law by the six New England states. A joint Congressional Compact resolution is being prepared for introduction in early March. Your office will, of course, be asked to comment on the Compact during the Committee process.

We hope you will support this promising, state-sponsored initiative. The Compact establishes a partnership of local government and industry. If successfully implemented, it will stabilize our region's dairy industry, without cost to the federal government or adverse impact on the national industry. If approved, the Compact could well serve as a model for other regions of the country now wrestling with this chronic problem of low dairy farm prices.

We look forward to working with you as the Compact moves through the Congress.

Sincerely,

Bruce Sundlun
Governor of Rhode Island
Chairman

Governor BRUCE SUNDLUN *Rhode Island* CHAIRMAN · Governor STEPHEN MERRILL *New Hampshire* VICE CHAIRMAN · Governor LOWELL P. WEICKER, Jr. *Connecticut* · Governor JOHN R. McKERNAN, Jr. *Maine* · Governor WILLIAM F. WELD *Massachusetts* · Governor HOWARD DEAN *Vermont*

THE COMMONWEALTH OF MASSACHUSETTS
EXECUTIVE DEPARTMENT
STATE HOUSE • BOSTON 02133
(617) 727-3600

WILLIAM F. WELD
GOVERNOR

ARGEO PAUL CELLUCCI
LIEUTENANT GOVERNOR

Same letter
To entire
House Judiciary
Committee

July 29, 1994

The Honorable John Bryant
Chairman, House Judiciary Subcommittee on
Administrative Law and Governmental Relations
B351-A Rayburn House Office Building
Washington, DC 20515

Dear Chairman Bryant:

I am writing to express my strong support for the Northeast Interstate Dairy Compact currently pending before the Judiciary Committee. The problems plaguing Massachusetts' dairy farm industry extend throughout New England, threatening the survival of a critical part of our heritage.

The Northeast Interstate Dairy Compact will establish a regional commission in response to the dissolution of the New England dairy market into distinct consumer and producer components. Currently, four of the six New England states are dairy importing states; only Vermont and Maine provide sufficient product for in-state consumption. Through its design, the Compact provides the consumer states control of the regulatory pricing process. The regional nature of the Compact ensures, however, that it will benefit dairy consumers and producers in Massachusetts and throughout the Northeast. Indeed, the Northeast Interstate Dairy Compact represents a comprehensive approach to New England's dairy problems, exemplifying the strength derived from regional cooperation. In addition to preserving jobs and a way of life for our farmers, the dairy farm industry will protect over 150,000 acres of prime open space in Massachusetts.

Thank you for your consideration as the House Judiciary Committee debates the Compact's enabling legislation.

Sincerely,

Bill Weld

William F. Weld

State of Vermont
OFFICE OF THE GOVERNOR
Montpelier 05609

Tel.: (802) 828-3333
Fax: (802) 828-3339
TDD: (802) 828-3345

HOWARD DEAN, M.D.
Governor

April 5, 1994

Honorable Mike Espy
Secretary
U. S. Department of Agriculture
14th St. and Independence Ave., SW
Washington, DC 20250

Dear ~~Secretary Espy:~~ Mike,

I am sorry I was unable to attend breakfast with you on Monday because of a prior commitment. I would like to take the opportunity of your visit, nonetheless, to express my personal interest in the Northeast Interstate Dairy Compact, which will soon come before the Senate Judiciary Committee, and to ask for your support.

As you know from our February letter to you, the Compact has increasingly drawn active support and assistance from each member of the New England Governors' Conference. Despite being named the "Dairy Compact", the Conference has come to see it as providing a benefit for each of our states, for dairy consumers and farmers alike, and it was on this more broad premise that the bill was passed with almost astonishing support by all of the New England state legislatures.

As the Compact has progressed and built up momentum, the Conference has also come to see it as a positive example of just what can be accomplished when seemingly disparate interests in the region pull together. In this sense, for the Governors' Conference, the Compact has come to transcend its specific focus on the dairy industry.

Obviously, my primary interest in asking for your support of the Compact in Congress is for the immediate benefit it would provide to Vermont's beleaguered dairy industry. At the same time, based on the broader understanding of the Compact developed by our Governors' Conference, I believe it would be most appropriate for the federal government, through your department, to assist the New England states in implementing this state-sponsored initiative.

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Page 2
Honorable Mike Espy, Secretary
U. S. Department of Agriculture
April 5, 1994

I hope you will give the Compact careful attention in the remaining few weeks before the Senate hearing, and decide to give it your active support.

Sincerely,

Howard

Howard Dean, M.D.
Governor

HD/csc

84-658 243

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STATE OF CONNECTICUT

DEPARTMENT OF AGRICULTURE
OFFICE OF THE COMMISSIONER

CONNECTICUT GROWN

John R. H. Blum
Commissioner

Tel: (203) 566-4667
Fax:(203) 566-6576

June 20, 1994

Honorable Patrick Leahy
United States Senator
433 Russell Building,
Washington, D.C. 20510

Dear Senator Leahy:

In light of the extreme importance of the proposed Northeast Interstate Dairy Compact to my State, I am taking the liberty of writing you directly and "out of channel" to express my dismay and outrage at what I understand to be a belated and misguided effort on the part of the milk industry foundation and certain milk and dairy product processors, such as Kraft and Cumberland Farms, to lobby for the defeat of the Compact. For this segment of a troubled industry to seek to thwart the legislative will of the six New England States to give themselves a regional mechanism for dealing with a regional crisis is simply unacceptable. This is particularly so since the Compact Committee took pains to consult with the handlers and processors of the regional throughout the process leading to approval in each State.

I urge you as strongly as I can not to let these selfish efforts derail a measure which represents the last remaining hope for the survival of New England's dairy farms and dairy farmers.

Sincerely,

John R. H. Blum
Commissioner

JRHB/ffc

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STATE OF VERMONT

DEPARTMENT OF AGRICULTURE, FOOD & MARKETS

OFFICE OF THE COMMISSIONER
DIVISION OF AGRICULTURAL DEVELOPMENT
DIVISION OF ANIMAL & DAIRY INDUSTRIES
DIVISION OF PLANT INDUSTRY, LABORATORIES & CONSUMER ASSURANCE

July 29, 1994

Honorable John Bryant, Chair
Subcommittee on Administrative Law &
Governmental Relations
B351-A Rayburn House Office Building
Washington, DC 20515

Dear Mr. Bryant:

The Northeast Interstate Dairy Compact is a ray of hope for our Vermont dairy farmers.

Producer milk prices in Order I (New England) have been flat for the past fifteen years. In 1979, our dairy farmers received an average milk price of $12.18 per hundredweight which was 12¢ more than the average price in 1991. During the years since 1979, the highest increase was 8% in 1993. If the yearly inflation rate were applied each year since 1979, the increase would be many times more than 8%.

It is obvious the Federal milk pricing system is not working, but changing that system seems to be next to impossible.

The Northeast Interstate Dairy Compact offers the opportunity for a change in the pricing system on a limited geographical basis. Using the Compact in New England would act as an indicator as to whether a Class I base pricing system will work and if so may prompt USDA to change the Federal milk pricing system.

For the well-being of our dairy farmers in Vermont, throughout New England and across the country, I urge your support of the Northeast Interstate Dairy Compact.

Sincerely,

George M. Dunsmore
Commissioner

GMD/11

SEAL OF QUALITY Vermont DEPT. OF AGRICULTURE

116 STATE STREET
DRAWER 20
MONTPELIER, VT 05620-2901
(802) 828-2500 FAX: (802) 828-2361

New Hampshire
Department of Agriculture

May 12, 1994

Stephen H. Taylor, Commissioner

Honorable Joseph R. Biden, Jr.
United States Senate
Dirksen Building
Room 224
1st C Street, NE
Washington, DC 20510

RE: S. 2069 Northeast Interstate Dairy Compact

Dear Senator Biden:

I write to express my support for the Northeast Interstate Dairy Compact, S. 2069, and to wage favorable consideration by the Senate Judiciary Committee during its upcoming review of the Compact.

As Commissioner of Agriculture and a dairy farmer, I confront on a daily basis the stress confronted by our state's dairy farmers. I have participated in many of the local, state and regional initiatives to address the problem of chronically low farm prices, which is the root cause of the industry's difficulty. The Compact's creation of an interstate commission, and the balanced authority provided to the Commission, responds to many of the conditions which result in the low prices, and this initiative has unusual promise as a result.

As Commissioner, I have also participated in the regional process of coordinating passage of the Compact by the six New England states. I have been impressed by the resilient strength of this effort and its ultimate product. We have overcome the industry's traditionally fractured approach to problem-solving to establish a remarkable consensus of support. And we have resolved the potentially disruptive tension between consumer and producer states, to again build a remarkable, regional consensus of support.

Following its Constitutional design, the Dairy Compact certainly is a remarkable product of interstate cooperation. I hope you and your colleagues on the Committee will favorably consider this legislation.

Respectfully,

Steve Taylor

Stephen H. Taylor
Commissioner

SHT:enr

Office of Commissioner 10 Ferry Street Caller Box 2042 Concord, NH 03302-2042
TDD Access: Relay NH 1-800-735-2964
(603) 271-3551

Maine Department of Agriculture, Food and Rural Resources

Deering Building, State House Station 28, Augusta, Maine 04333-0028

Maine produces.

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John R. McKernan, Jr.

Commissioner
Bernard W. Shaw
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Deputy
Carl W. Flora
Tel: 207 287-3871

Bureaus

Agricultural Production & Marketing
Peter N. Mosher
Tel: 207 287-3117

Public Service
Peter W. Curra
Tel: 207 287-3219

April 5, 1994

Representative Thomas H. Andrews
1724 Longworth House Office Bldg
Washington, DC 20515-1901

Dear Representative Andrews:

As you know, the North East Interstate Dairy Compact is about to be introduced in the Congress and I wanted to take this opportunity to highlight two significant items which relate to this document.

The legislative action on Maine"s enabling legislation was taken several years ago and enjoyed widespread support by the Joint Standing Committee on Agriculture, the full Legislature, as well as Governor McKernan. One of the reasons was that it is a widely recognized fact that a regional solution to dairy problems is more in keeping with the dairy industry's problems and this one of the few vehicles presently available which stressed a regional approach.

Thank you for your continued support of this issue.

Sincerely,

Bernard W. Shaw

Bernard W. Shaw
Commissioner

BWS-vaf
cc: Peter W. Curra

FAX 207 287-7548
TDD 287-4470

The Senate of the State of New Hampshire
State House, Concord, 03301-4951

GEORGE F. DISNARD
District 8

Office 271-2117

TTY/TDD
225-4033

94 FEB 28 PM 2: 14

February 23, 1994

Senator Judd Gregg
393 Russell Senate Office Bldg.
Constitution Ave. and 2nd St NE
Washington, D.C. 20510

Dear Judd:

Just a brief note to encourage you to support the Interstate Dairy Compact. I believe it is very important to the State of New Hampshire.

Cordially,

George

Sen. George Disnard
Democratic Leader

GD/rad

State of Rhode Island and Providence Plantations

REPRESENTATIVE
STEPHEN J. ANDERSON
88 Fiske Avenue
Coventry, Rhode Island 02816

Room 21, State House
Providence, Rhode Island 02903

Committee on Labor

002333 APR 19 '94

House of Representatives

April 14, 1994

Honorable John H. Chafee
567 Dirksen Senate Office Building
Washington, DC 20510

Dear Senator Chafee:

As the sponsor of the Northeast Dairy Compact in Rhode Island, I would like to thank you for agreeing to serve as co-sponsor of the Compact legislation in Congress. I am proud of our state effort in passing the Compact, and believe it will serve the state's dairy consumers and few remaining farms as well as benefit the New England region as a whole.

I am also writing to respond to a letter I understand you have received from the International Dairy Foods Association. The thrust of the letter is that the Compact is anti-consumer. It is remarkable to me that the Association, which represents the nation's dairy processors, have somehow decided they can credibly speak as promoting the best interests of consumers.

It is also remarkable to me that the Association can assert with a seemingly straight face, as they do in their conclusion, that we should rely on "free market competition" as the best way to sell dairy products, and, even to protect the farmers' interest. As you well know, the dairy industry is already a heavily regulated industry, for better or worse, and that what remains is far from a "free market."

Our region's dairy industry is infact highly concentrated. A very few firms dominate the fluid processing industry. In Rhode Island, we supply only a marginal amount of our fluid needs, (the Association's letter actually overstates the contribution made by our dairy farms) and have only one processing firm left. Indeed, my primary reason for sponsoring the Compact was to establish a state regulatory mechanism which could rationalize the existing federal regulatory, and concentrated, market structure, to preserve this slim, remaining in-state competition.

Honorable John H. Chafee
April 14, 1994
Page 2.

At bottom, the point is that I have no dairy farms in my district. My interest in and support for the Compact stems primarily from my belief that the state must intervene in this manner on behalf of our consumers. I believe that the Compact, as structured, will serve the interest of our state's consumers, as well as those in the region, at the same time that it promotes the interests of dairy farmers.

You should also know that this is the first time that I, as a legislator, have heard of these objections from the processors' lobby. As part of the process, we heard only one very specific objection, from one processor, about the make-up of the Compact commission. (This is a separate matter of our state's law, and does not involve the Compact itself). And, indeed, the processor's lobbyist went out of his way to express his support for the substance of the Compact.

The tactic of the National Association in keeping silent until now strikes me as standard sandbag tactics, with which I am sure we are both familiar: Keep silent during the time the legislation is being formulated, and only then, after the legislature has moved into the deliberative process when it is harder to address them, raise a litany of horror stories about the harm that the bill will cause.

If it would be helpful to you, I would be happy to address more specifically the issues raised by the Association. For now, I believe it perhaps necessary to say only that your legislative assistant, Coatas Lear, and I have discussed at length the Compact's consumer protection components in detail. I am confident that he, as I, understands the degree of protection they provide. In any event, I believe the Rhode Island Legislature, by the nature of its overwhelming vote of support, has expressed the sense of our state that the Compact serves our best interest.

Thank you for your support of our state's initiative. This is an example of the federal-state partnership at its working best.

Sincerely,

Stephen J. Anderson

Stephen J. Anderson
State Representative
District 42

SJA/seb

Gollum is the Biggest Little State in the Union

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

Department of Environmental Management
DIVISION OF AGRICULTURE
Roger Williams Building
22 Hayes Street
Providence, R.I. 02908 - 5025
(401) - 277-2781

March 16, 1994

Mr. Coates Lear
Legislative Assistant
Office of Senator Chafee
567 Dirksen Building
Washington, D.C.

Dear Mr. Lear:

As you requested, I am providing you with the information, both personally and on behalf of the Rhode Island Division of Agriculture, for the Northeast Interstate Dairy Compact.

The Compact would benefit our consumers as it regulates and assists the remaining dairy industry in Rhode Island. As you know, we import practically all of the milk we consume. Nature's Best is the last local diary in the state. Without much in-state competition, the price our consumers pay is at the whim of out-of-state dairies. As a result, we have seen consistently high prices in the stores, even when the farm price for milk dropped quite dramatically a few years back.

By stabilizing the farm price, the Compact should ensure the vitality of our few remaining farms, which should in turn stabilize Nature's Best supply of local milk. This will allow Nature's Best to provide at least some measure of in-state competition, to the benefit of our consumers. Stabilizing the farm price will also take consumers off the federally regulated price roller-coaster, and thereby stabilize and, quite likely, lower the consumer price in the long term.

The Compact bill was debated quite thoroughly during the Legislative process. All of the issues I have discussed here were raised. As part of that process, the Division discussed the Compact's provisions with representatives of the consuming public as well as industry representatives. Given our obvious status as an importing state, we wanted to make sure we were on the right track in thinking the Compact would work to our overall benefit.

Page 2
March 16, 1994

We received consistent and uniform support for the Compact from those with whom we spoke.

More recently, I, personally, have spoken about the Compact with a variety of people. They have expressed to me their understanding and concern over the continuing destruction of our diary industry. I have heard expressed the concern for the destruction of a way of life, and a real concern about the fact that we are now so dependent on an out-of-state supply for this basic food. While I cannot say there is a broad, technical understanding of the Compact, there is tangible support for its concept, for Rhode Island to participate in a regional process designed to stabilize our local and regional dairy industry.

As a final note, I am confident Rhode Island consumers are well protected by the format of the Compact's regulatory pricing process. Most specifically, the ability of our delegation to exempt itself from any price regulation adopted by the commission allows us to participate in the Compact without risk.

The Compact is a nice blend of regional cooperation and local benefit. Senator Chaffee's support of this bill as a co-sponsor would be in line with the intent of the Rhode Island General Assembly when it passed the Northeast Interstate Dairy Compact Bill last session.

Sincerely yours,

Ronald D. Newman

Ronald D. Newman
Agriculture Products Inspector

RDN/CG

cc: John M. Lawrence, III, Chief
 Stephen M. Volpe, Sanitarian

State of Connecticut

REPRESENTATIVE THOMAS S. LUBY
MAJORITY LEADER
HOUSE OF REPRESENTATIVES
EIGHTY-SECOND DISTRICT
MERIDEN AND MIDDLEFIELD

LEGISLATIVE OFFICE BUILDING
SUITE 4100
HARTFORD, CONNECTICUT 06106-1591
1-203-240-8500
1-800-842-1902

March 22, 1994

The Honorable Joseph Lieberman
316 Hart Senate Office Building
Washington, DC 20510

Dear Senator Lieberman:

I write to express my support for the Northeast Interstate Dairy Compact.

The compact is a model product of interstate cooperation. This coordinated effort is necessary to resolve the chronic price problems facing New England's dairy farmers. It would stabilize and enhance dairy farm prices, protecting both farmers and consumers from price fluctuations. In addition, it would resolve the litigation that has hindered all previous individual state efforts to regulate dairy prices.

The Northeast Interstate Dairy Compact was given very careful consideration by the General Assembly and passed by wide margins in both the House and the Senate. I hope you will decide to co-sponsor the compact bill in Congress and give it your active support.

Very truly yours,

Tom

Thomas S. Luby
Majority Leader
House of Representatives

J – Keep battling!
T

Printed on recycled paper

Maine Farm Bureau Association

The Voice Of Organized Agriculture

April 1, 1994

Representative Thomas H. Andrews
1724 Longworth House OB
Washington, D.C. 20515-1901

Dear Representative Andrews:

Maine Farm Bureau, the state's largest general farm organization of 5,000 members, writes to ask for your support and co-sponsorship of the Dairy Compact Resolution to ratify the Northeast Interstate Dairy Compact.

The Dairy Compact has been enacted into law by the six New England states and a joint congressional resolution will be introduced shortly. The Dairy Compact is a bi-partisan, state-sponsored, regional response to the chronic problem of low dairy farm prices. If successfully implemented, the Compact will stabilize our region's dairy industry and reinvigorate this crucial segment of our rural economy.

Please join the other three Maine congressional delegates and become a co-sponsor of the Dairy Compact.

Thank you for your help.

Sincerely,

Daniel LaPointe

Dan LaPointe
President

DL/ld

478 Western Avenue P.O. Box 430 Augusta, Maine 04332-0430 207-622-4111

Connecticut Farm Bureau Association, Inc.
510 Pigeon Hill Road • Windsor, CT 06095-2112 • (203) 683-1922 • Fax (203) 683-2798

May 19, 1994

Wisconsin Farm Bureau Federation
Mr. Howard D. Poulson, President
P.O. Box 5550
Madison WI 53705-5550

Dear Dan:

On behalf of the New England states' Farm Bureaus, whose Presidents I have recently contacted, I want to respond to your concern that the Northeast Dairy Compact would somehow burden Wisconsin milk that might be imported into the Compact region. As you know, Wisconsin milk is not currently marketed as fluid milk in New England. Since the Compact applies only to fluid milk, there is no effect of any kind under current market conditions.

Nor would the Compact create any burden if market conditions change, and Wisconsin milk comes to be sold for fluid consumption in New England. Under the Compact, as would occur under the federal order, this milk may be marketed the same as milk produced within the Compact region, without burden. The milk would be subject to the price regulation, but this would not create a relative disadvantage to Wisconsin farmers. As with New England produced milk, the Wisconsin milk will be pooled and the proceeds paid to the producers supplying the milk. If Wisconsin farmers were supplying milk for fluid consumption in New England, then, those farmers would receive the benefit of the Compact price. For more information or the details of the Compact, you may contact Dan Smith, Executive Director of the Northeast Interstate Dairy Compact Committee, at (703) 751-0204.

We have worked hard, and I believe successfully, to structure the Compact so that it provides a benefit to our region's farmers without harm to farmers outside the region. We are all in this together, and I hope you will look closely at being supportive of an initiative that helps other dairy farmers without harm to you.

Sincerely,

Norma

Norma O'Leary
President

c.c. Richard Tryon, President, Massachusetts Farm Bureau
Bill Stamp, President, Rhode Island Farm Bureau
Clark Hinsdale, President, Vermont Farm Bureau
Gordon Gowan, President, New Hampshire Farm Bureau
Dan LaPointe, President, Maine Farm Bureau

NO/jmw

INDEPENDENT DAIRYMENS COOPERATIVE ASSOCIATION, INC.

P.O. Box 341
Middlebury, Vermont 05753
(802) 388-4439

Robert Dumas, Pres.
Douglas Weld, Vice Pres.
Andy Dykstra, Sec./Treas.

April 11, 1994

Representative Bernard Sanders
213 Cannon House Office Building
Washington, DC 20515-4501

Dear Representative Sanders,

On behalf of our membership, Independent Dairymen's Cooperative Association would like to register our support for the Northeast Interstate Dairy Compact. We feel that the Compact will help establish a stable pricing policy in the Northeast which is long overdue. The Compact not only takes into consideration the farmer's production costs, but also the demands of the marketplace. It encompasses checks and balances to ensure that pricing is fair and equitable.

We have kept in close contact with the Compact Committee, and have contributed our financial support to help successfully ratify this legislation in the states of the Compact region. We appreciate your support to date on behalf of the Compact, and look forward to your continued efforts to pass the Compact bill through the Congressional channels quickly.

Sincerely,

Leighton Wilcox

Leighton Wilcox
General Manager

LW/sjb

cc: Dan Smith, NE Compact Committee

INDEPENDENT DAIRYMENS COOPERATIVE ASSOCIATION, INC.
P.O. Box 341
Middlebury, Vermont 05753
(802) 388-4439

Robert Dumas, Pres.
Douglas Weld, Vice Pres.
Andy Dykstra, Sec./Treas.

July 27, 1994

Honorable John Bryant
Chair, Subcommittee on Administrative Law and Governmental Relations
B351-A Rayburn House Office Building
Washington, DC 20515

Dear Mr. Bryant,

We have been informed that the House Subcommittee on Administrative Law and Governmental Relations will be holding a hearing on the Northeast Interstate Dairy Compact August 3rd.

On behalf of our membership, Independent Dairymen's Cooperative Association, Inc. would like to register our support for the Compact. In these uncertain economic times, we feel that the Compact will help establish a stable pricing policy in the Northeast and allow farmers to continue the tradition of agriculture in our area. Not only does the Compact take into consideration the farmer's production costs, but also the demands of the marketplace. It encompasses checks and balances to ensure that pricing is fair and equitable.

We have kept in close contact with the Compact Committee, and have contributed our financial support to help successfully ratify this legislation in the states of the Compact region. Even though the Compact Bill has reached Congress and passed Senate Judiciary, we feel it is important to keep the ball rolling with acceptance by the House. We look forward to your support of this Bill at the hearing next Wednesday. Thank you.

Sincerely,

Leighton Wilcox
General Manager

LW/sjb
cc: Daniel Smith, Executive Director, Northeast Interstate Dairy Compact Committee

Martin Stream Dairy
Jim & Priscilla Rowbotham
428 Middle Road
Fairfield, Maine 04937

June 24 1994

Dear Congressman Andrews;

Now is the time to convince the Maine and other Northeast farmers that you are willing to put pressure on others in Washington that you are sincere in helping us. We know that The Northeast Compact has passed in one of the Senate Committee hearings brings some good new but we know there still needs to be alot more Senators and Congressman convinced that if the Dairy Farmers are to survive more, more have to vote for the Compact. Congressman Andrews being one of the Congressman having held office in Washington for the shortest time you cetainly must want people particulary Maine farmers to know you are working for us, so you must have enough friends and clout to convince others we are falling so far into debt that none of us will be able to survive. You have told me you are from a dairy farming family, so you should be ableto relate well to our problems. Also being from Maine we are counting on you to speak and convince them this is needed more now than any other time in history. When milk prices are at an all time low for cost increases something needs to be done before it is too late. We have been in farming for over 30 years getting nearer to retirement and find that impossible as who can finance a dying industry. Prices are at what they were 14 years ago, but new equipement and parts are out of reach. A muffler for one tractor is over 500.00 dollars. that takes many 100 lbs of milk at current prices to pay for it., that is only one of the million part we purchase that are reaching sky high prices. A used tractor is 10,000.00 dollars. This can not continue and still expect farmers to survive. So please talk to other Senaters and Congressman and get them to give us a chance to live on with the life we deserve.

We know you are looking to reach out for higher positions like George Mitchell's position, well let's see how much effort you can put into this badly needed Price Compact.

Sincerely and Thank you:
Priscilla Rowbotham

Priscilla Rowbotham

Androscoggin Holsteins, Inc.
The Nutting Family
John and Sandy, Jay, Gavin
RR 1 Box 3410 • Leeds, Maine 04263 • (207) 524-3941

April 12, 1994

Dear Senator Mitchell:

I'm writing to express our sincere appreciation for your co-sponsorship of the Northeast Dairy Compact bill introduced by Sen. Leahy. The enabling legislation passed thru the Maine Senate and House (of which I was a member) with unanimous bi-partisan support.

All New England states forming a co-operative working compact is in the best interest of all farmers and consumers in New England. It will stabilize farmer income and guarantee a fresh available local supply of milk and milk products. Of further note, all New England dairies and co-operatives are maintaining a synthetic BST free policy so consumers can be assured of the exact same high quality supply of milk and milk products.

Sincerely,
John

cc: Dan Smith, Council of N.E. Farm Co-op

84-658 0 - 94 - 7

St. Albans Cooperative Creamery, Inc.

St. Albans, Vt. 05478 802-524-6581

Est. 1919

August 1, 1994

Honorable John Bryant
Chair, Subcommittee on Administrative Law and Governmental Relations
B351-A Rayburn House Office Building
Washington, DC 20515

Dear Sir,

I've spent the better part of the last forty years working to improve the lives of dairy farmers, and, I might add, without a great deal of success. These forty years began while obtaining a Bachelor of Science degree in Dairy Technology from the University of Vermont. I was lucky enough to find work in my chosen field and spent thirty years as the General Manager of the St. Albans Cooperative Creamery located in St. Albans, Vermont. Since my retirement in 1987, I have continued in a consulting position with the Co-op and am also a Director of the Advisory Board of the New England Dairy Compact.

I have also been a Director of the National Milk Producers Federation. Many times we were urged by the Congress to devise a plan which dairy farmers could implement and operate themselves with no reliance upon the Congress for its success. This has been a constant theme, one which goes back to the terms of Senator George Aiken and continues today with former House member and now Senator James Jeffords as well as Senator Patrick Leahy.

Because of this direction given by Congress, New England dairy farmers have come together and enacted the New England Dairy Compact. We come now to ask for your help in finshing the job which we have been empowered to do. We need Congressional approval to test this concept in the marketplace.

This Compact covers only fluid or bottled milk. It will not interfere with other pricing mechanisms such as such as Fedral Orders or Minnesota-Wisconsin pricing. It will not restrict the flow of milk into New England from any region of the country that presently supplies it nor any other supply which wishes to come into this market. It will not compete with the great dairy manufacturing areas of the country.

We sincerely appreciate your help in scheduling the Compact for committee consideration on August 3, 1994.

I ask you and others to approve this Compact. I should add that at this stage of my life, if the Compact is not passed, I will have to cite the Congress for discrimination of the elderly!!

Thank you again and please let me know if I can be of any assistance.

Sincerely yours,

Ryle Dow

Ryle Dow

CC: *Daniel Smith*

NATIONAL BANK of MIDDLEBURY

Organized 1831

MIDDLEBURY, VERMONT 05753-0189

O. KENNETH PERINE, President

30-32 MAIN ST.
P.O. BOX 189
TEL • (802) 388-4982
FAX • (802) 388-6077

June 10, 1994

The Honorable Bernard Sanders
U.S. House of Representatives
Washington DC 20510

Dear Mr. Sanders:

Recently Addison County business people met to discuss the proposed Northest Interstate Dairy Compact. At that meeting, I commented on National Bank of Middlebury's experience with farmers. I am taking this opportunity to reiterate those comments to you.

At National Bank of Middlebury, we do not service a tremendous number of agricultural loans. We do, however, lend to a handful of farms and have financed cattle purchases through dealers. In our limited experience, we have seen farms that do not have good financial statemtents for the most part. When compared to other businesses, most farms do not have healthy balance sheets and do not have adequate cash flow. We believe this to be the case in large part due to the inability of farmers to control the price at which they sell their milk.

Dave Kohl, a nationally known agricultural consultant, spoke to Vermont bankers not too long ago. He outlined five key ratios that speak to the viability of an agricultural operation. Among these are repayment capacity, solvency and efficiency. When we calculated these ratios for a sample of the farms that we service, we discovered that the sample did not stack up well with industry norms. Our farms had poor repayment capacity, high debt-to-asset ratios, and were by and large less efficient.

When a farmer cannot meet monthly obligations, he either borrows money to make the payments or defers payments. In either case, the end result is an increase in debt and a decrease in the farmer's equity position. This phenomenon has been occurring for some time and we have seen the tangible result with significant consolidation in the industry as well as significant bankruptcies.

Higher milk prices are not the sole panacea. However, I calculated the impact of a

The Honorable Bernard Sanders
Northeast Interstate Dairy Compact
June 10, 1994
Page 2

$.50/cwt increase in price of milk on the farmers in our portfolio. What I found was that this increase gave 4 out of 5 farms enough cash flow to meet monthly obligations whereas only one of five had sufficient cash flow before. This improvement in cash flow creates positive ripple effects on the balance sheet as debt is paid down instead of incurred. And it creates a positive effect on operational efficiency as the farmer can see that he does not necessarily have to increase the production of his herd (through addition of cows or use of BST) to increase his revenues. What the possibility of increased prices for milk (with the attendant production limitations) creates is a return to reliance on profitability of the herd, not necessarily production.

We heartily support the concept of the Northeast Interstate Dairy Compact. We feel it will have a positive impact on the financial health of our dairy industry. Thank you for your consideration of my comments.

Sincerely,

G. Kenneth Perine
President

GKP/clw

Richard H. Fallon, Jr.
Harvard Law School
Cambridge, Massachusetts 02138

June 30, 1994

The Honorable John Bryant
Chair, Subcommittee on Administration
Law and Governmental Relations
House Judiciary Committee
B351-A Rayburn House Office Bldg.
Washington, D.C. 20515

Re: Proposed Northeast Interstate Dairy Compact: H.R. 4560

Dear Congressman Bryant:

I write on behalf of my client, the Northeast Interstate Dairy Compact Committee, in regard to H.R. 4560, which would establish a Northeast Interstate Dairy Compact.

The Northeast Interstate Dairy Compact Committee consists of the commissioners of agriculture of the six New England states, the original sponsors of the proposed Compact in the Vermont and New York legislatures, the chairs of two New England dairy cooperatives, and two dairy farmers. The Compact Committee was formed to promote the establishment of a Northeast Interstate Dairy Compact as a response to the chronic regional problem of inadequate dairy prices. Depressed dairy prices increasingly threaten the dairy industry of the Northeast United States and the cultural, economic, and ecological benefits that the dairy industry provides.

The Compact Committee has asked me to write to you about some of the constitutional and legal issues that the proposed Compact raises, has been claimed to raise, or might be thought to raise. (Others have articulated the substantive policies that the Compact would promote). My constitutional and legal conclusions can be summarized briefly: enactment of H.R. 4560, authorizing the Compact, (i) would be constitutionally permissible under the Commerce[1] and Compact[2] Clauses of the

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[1] U.S. Const., Art. I, sec. 8, cl. 3.

United States Constitution, (ii) would not conflict with the central policies of the Agricultural Marketing Agreement Act of 1937 ("AMAA"),[3] and (iii) would accord with the tradition of constitutional federalism that values diversity and state and regional experiment in promoting cultural, economic, and ecological benefits.

When put together, the relevant bodies of law establish that the decision whether to approve the Dairy Compact is a political one, for Congress, and suggest that considerations of federalism should weigh more heavily than the shibboleths of laissez faire economics.

1. **Authorization of the proposed Compact is well within Congress's powers under the Commerce and Compact Clauses of the Constitution.** The Constitution vests Congress with power to regulate interstate commerce.[4] In the absence of federal legislation, the congressional power is said to be "dormant," and the Supreme Court has developed various tests for the permissibility of state legislation that either discriminates against or incidentally restricts interstate commerce. It is unnecessary, however, to rehearse those tests here. The judicially developed tests are inapplicable in cases in which Congress enacts legislation that either prohibits or permits regulation by the states. In cases in which Congress expresses its approval or disapproval of state legislation, Congress's power is no longer dormant, and Congress's determination becomes controlling.[5]

In light of these principles, congressional consent to the proposed Northeast Dairy Compact would clearly vitiate any concern that the proposed Northeast Dairy Compact might violate "the dormant commerce clause." Both the holdings and the rationale of cases invalidating prior state efforts to support

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[2] U.S. Const., Art. I, sec. 10, cl. 3.

[3] 7 U.S.C. sec. 601 et seq., as amended (1988 & 1993 Supp.).

[4] See U.S. Const., Art. I, sec. 8, cl. 3.

[5] See, e.g., Prudential Ins. Co. v. Benjamin, 328 U.S. 408, 421-27, 433-36 (1946); Southern Pacific Co. v. Arizona, 325 U.S. 761, 769 (1945) (describing as "undoubted" the power of Congress "to redefine the distribution of power over interstate commerce" to "permit the states to regulate the commerce in a manner which would otherwise not be permissible").

dairy prices would be rendered irrelevant.[6] Acting pursuant to its constitutional authority to regulate commerce, Congress possesses indisputable power to authorize states to promote and protect domestic industries such as the dairy industry.[7]

Congress's capacity to authorize cooperative state action, as under the Northeast Interstate Dairy Compact, is equally indisputable. The Compact Clause empowers Congress to approve cooperative arrangements of this kind.[8] As the Supreme Court stated in Cuyler v. Adams, "By vesting in Congress the power to grant or withhold consent [to interstate compacts], or to condition consent on the States' compliance with specified conditions, the Framers sought to ensure that Congress would maintain ultimate supervisory power over cooperative state action that might otherwise interfere with the full and free exercise of federal authority."[9] The Compact Clause, like the Commerce Clause, makes it the role of Congress, not the courts, to determine whether an interstate agreement unacceptably interferes with national powers or the interests of other states. Congressional consent under the Compact Clause would therefore immunize the proposed Dairy Compact from objections based on the

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[6] Arguments against the Compact that appeal to cases such as Baldwin v. G.A.F. Seelig, Inc., 294 U.S. 511 (1935), and Farmland Dairies v. McGuire, 789 F. Supp. 1243 (S.D.N.Y. 1992), are therefore misleading at best.

[7] See, e.g., Northeast Bancorp, Inc. v. Board of Governors of the Federal Reserve System, 472 U.S. 159, 174 (1985) ("When Congress so chooses, state actions which it plainly authorizes are invulnerable to constitutional attack under the Commerce Clause.").

[8] Because the subject matter of the Northeast Interstate Dairy Compact affects interstate commerce, and because interstate commerce is clearly an appropriate subject for federal legislation under the Commerce Clause, it is clear that Congress may authorize the Compact under the Compact Clause. See Cuyler v. Adams, 449 U.S. 433, 440 (1981)(establishing that "where Congress has authorized the States to enter a cooperative agreement, and where the subject matter of that agreement is an appropriate subject for federal legislation, the consent of Congress transforms the States' agreement into federal law under the Compact Clause"). It is therefore irrelevant whether the Northeast Interstate Dairy Compact meets the criteria of cases such as United States Steel Corp. v. Multistate Tax Comm'n, 434 U.S. 452 (1978), for interstate agreements that require congressional approval in order to avoid invalidation under the Compact Clause.

[9] 449 U.S. 433, 439-40 (1981).

Commerce Clause.

2. If approved by Congress, the Northeast Dairy Compact would not conflict with the central policies of the Agricultural Marketing Agreement Act of 1937. This lankmark piece of New Deal legislation, like the proposed Compact, establishes minimum pricing regulations for sales of milk by farmers to processors, and it does so for the same purpose of maintaining a healthy dairy industry throughout the nation's various regions. Under the AAMA, states retain authority to establish prices above the federally established floor.[10] The Compact is therefore consistent with the principal aims of the AAMA.

The AMAA and the federal market order system have always coexisted with state regulatory programs establishing minimum producer prices. State programs in eleven states currently regulate 19% of the nation's milk supply.[11] In the 1940s, shortly after the enactment of the AAMA, state programs regulated almost a quarter of the nation's milk.[12] Accordingly, arguments founded on fears that the Compact would undermine the federal order system are inconsistent with the experience of fifty years.

3. Congressional authorization of interstate compacts accords with the tradition of federalism that values experiment, cooperative innovation, and state and regional diversity. In one of his most famous opinions, Justice Louis D. Brandeis lauded the states as laboratories of experiment.[13] Brandeis echoed a deep tradition of American federalism, which resists homogenization, values diversity, and entrusts to the states a large responsibility for preserving and promoting the welfare of their citizens.

In an integrated modern economy, nearly all state regulation has at least an indirect impact on interstate commerce. Without congressional authorization, the ambit for state regulation to

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[10] See, e.g., Schwegmann Bros. Giant Super Markets v. Louisiana Milk Comm'n, 365 F. Supp. 1144 (M.D. La. 1973) (three judge court), aff'd without opinion, 416 U.S. 922 (1974); United Dairy Farmers Coop. Ass'n v. Milk Control Comm'n, 335 F. Supp. 1008 (M.D. Pa. 1971) (three-judge court), aff'd without opinion, 404 U.S. 930 (1971).

[11] See Alden Manchester, Mark Weimer, & Richard Fallert, The U.S. Dairy Pricing System 6-8 (USDA-ERS, Ag. Info. Bull. No 695, April 1994).

[12] See id.

[13] See New State Ice Co. v. Liebmann, 285 U.S. 262, 311 (1932) (Brandeis, J., dissenting).

preserve the economic, cultural, and ecological benefits of a healthy dairy industry has therefore narrowed. But the Commerce Clause reflects a theory of political union, not an unbending prohibition against state efforts to meet distinctively local needs.[14] Congress retains the indubitable authority to authorize state and cooperative efforts to preserve the distinctive, local benefits of industries -- such as the dairy industry -- that are woven deeply into the fabric of state and regional life.

Under our Constitution, the decision whether to authorize the Northeast Dairy Compact is expressly political, not economic.[15] It is a decision for Congress, in its political wisdom, not for the courts. The Constitution puts the decision in these terms to ensure an appropriately political balance of interests on which American federalism depends. On the one hand, state and regional interests must not overwhelm the national interest. On the other, room must be left for the states, individually or cooperatively, to promote values and ways of life that have shaped their traditions, suffused their culture, and inspired their hopes. Under the United States Constitution, "federalism" is not a short-hand for "national uniformity." No provision of the Constitution mandates a national, regional, or local regime of laissez faire. As Felix Frankfurter and James Landis noted in their classic article on the Compact Clause, "Creativeness is called for to devise a great variety of legal alternatives to cope with diverse forms of interstate interests."[16]

Within the American tradition, a vital federalism is not hostile to -- but instead requires -- state and regional initiatives that depart from, go beyond, or attempt variations on prevailing national norms. The Compact Clause expressly grants Congress the political discretion to approve such initiatives. Viewed in this light, the largest issues surrounding H.R. 4560 are only secondarily ones of law or economics. The largest issues involve federalism. The proposed Northeast Dairy Compact tests the openness of Congress to regional cooperation, diversity, and experiment.

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[14] See Laurence H. Tribe, American Constitutional Law 417 (2d ed. 1988).

[15] See, e.g., Cuyler v. Adams, 449 U.S. 433, 441 n.8 (1981) (noting that "'the requirement that Congress approve a compact is to obtain its political judgment'").

[16] Felix Frankfurter & James M. Landis, The Compact Clause of the Constitution -- A Study in Interstate Adjustments, 34 YALE L. J. 685, 688 (1925).

I hope the Senate's deliberation will focus on these issues and that H.R. 4560 will be approved.

Please feel free to share this letter with any of your colleagues.

Sincerely,

Richard Fallon

Richard Fallon

cc: Honorable John Olver

Legislative Commission on Dairy Industry Development

Senator John R. Kuhl, Jr.

New York State Senate
Albany, New York 12247
(518) 455-2905

Post-it™ brand fax transmittal memo 7671	# of pages ▸ 2
To Dan Smith	From Tom Conway
Co.	Co.
Dept.	Phone #
Fax #	Fax #

August 3, 1994

Honorable John Bryant, Chairman
Subcommittee on Administrative Law and
Governmental Relations
B 351-A Rayburn House Office Building
Washington, D.C. 20515

RE: H.R.4560,
Consent of Congress to
Northeast Interstate Dairy Compact

Dear Congressman Bryant:

I strongly support the Northeast Interstate Compact and I urge your Subcommittee to favorably report the above bill which would grant the consent of Congress to the Compact pursuant to U.S. Constitution, Art. I, § 10, cl. 3.

I am Chairman of the New York State Senate Committee on Agriculture. I am also Chairman of the Joint Legislative Commission on the Dairy Industry. Because of my official responsibilities, as well as my personal commitment, I have for many years studied various means for preserving the family dairy farm.

The Northeast Interstate Dairy Compact represents a creative and promising new application of federalism at its best. The Compact recognizes and preserves the existing federal milk market order system, but allows joint state action to adjust the fluid milk price to regional needs. Any such price adjustment would be financed solely by the regional market and not by the federal treasury. The Compact provides safeguards to keep milk production at present levels and prevent any addition to the national surplus. Accordingly, the Compact could be a model for federal-state regulatory cooperation and for regional initiatives by any group of states willing to develop and finance a program.

New York is not a participant in the Compact, but one-thousand two hundred New York dairy farmers who ship their milk into the New England market would be affected. This is 11 percent of all New York Dairy farmers, and they ship a total of 1.6 billion pounds of milk a year into New England.

Honorable John Bryant Page 2
August 3, 1994

The Compact is drafted so that the New York farmers shipping into the New England regulated area would receive an over-order price established under the Compact. The Compact contains explicit provisions forbidding trade barriers against outside milk dealers or discrimination against outside dairy farmers. (Compact §19[6]) Accordingly, the legitimate interests of all non-participating states, including New York's, are protected. The interests of 1,200 dairy farmers in New York would be directly benefitted by approval of the Compact.

I urge your Subcommittee to report this bill favorably and the full House to enact the bill.

Sincerely,

Senator John R. Kuhl, Jr.
Chairman

JRK:tcj

NEW ENGLAND GOVERNORS' CONFERENCE, INC.

RESOLUTION NUMBER 120

A Resolution of the New England Governors' Conference, Inc. in support of the Northeast Dairy Compact.

Whereas, the Commissioners of Agriculture from the six New England states have worked diligently with leaders of the dairy industry to develop a uniform draft Northeast Interstate Dairy Compact; and

Whereas, as the best means yet identified to provide price relief to our dairy farmers, the Compact holds great promise for meeting the pressing need of our region to preserve the viability of our agriculture; and

Whereas, the Compact is an unique, concrete expression of the common will of those directly involved in our region's dairy industry; and

Whereas, the Compact must be passed in identical form by each of the New England states before it is presented to Congress for ratification;

NOW THEREFORE BE IT RESOLVED that The New England Governors' Conference, Inc. supports the draft Northeast Interstate Dairy Compact developed by the Commissioners of Agriculture now before the New England State Legislatures; and

BE IT FURTHER RESOLVED that, to ensure the draft Compact remains uniform, the New England Governors' Conference, Inc. urges each state legislature to coordinate its review and amendment process with that of their counterparts in New England; and

BE IT FURTHER RESOLVED that, to ensure the coordinated process responds promptly and effectively to this regional call to action, the New England Governors' Conference, Inc. urges all the New England State Legislatures to act quickly upon the Compact; and

BE IT FURTHER RESOLVED That, a copy of this resolution be sent to the leadership of the Senates and Houses of Representatives of each New England State and to each of the Chairs of the appropriate Legislative Committees.

This Resolution is effective immediately.

ADOPTION CERTIFIED BY THE NEW ENGLAND GOVERNORS' CONFERENCE, INC. on February 1, 1993.

Howard Dean, M.D.
Governor of Vermont
Chairman

Howard Dean, M.D.
Governor

State of Vermont
Office of the Governor
Pavilion Office Building
Montpelier, Vermont 05609
(802) 828-3333

April 12, 1993

The Honorable William Weld
Governor of Massachusetts
State House, Room 360
Boston, MA 02133

Dear ~~Governor Weld~~: Bill

The Northeast Interstate Dairy Compact has made substantial progress these past few months. I am writing to further enlist your support for this effort in Massachusetts.

As you are aware, a uniform draft Compact has been developed and introduced in the four New England states which have not yet acted on its passage. I have been told that legislation on the Compact is now before the Massachusetts Joint Committee on the Environment.

Passage of the Compact in New England is crucial as price support has not been addressed at the federal level. As such, states have been forced to seek patchwork solutions. You and I have corresponded in the past on the plight of our dairy farmers. We both agree that a regional, long-term solution, such as the Northeast Interstate Dairy Compact, offers states one of the best opportunities to assist our dairy farmers. Support of this legislation in Massachusetts is critical to the success of the Compact.

In a memorandum dated March 31, 1992, to my Office of Policy Research, Commissioner Greg Watson states:

> "I am totally committed to working with my colleagues throughout the Northeast to develop and implement a regional solution to the crisis facing the region's dairy farmers. Governor Weld shares this commitment."

At this time, your continued support and commitment of this effort is crucial for the passage of legislation in

Page Two

Massachusetts. As Chair of the New England Governors' Conference, I have made passage of the Compact in New England a priority. With your support, we have the opportunity for the Compact to become a viable solution for our dairy farmers.

Thank you for your attention to this matter. I look forward to seeing you June 9 when we sign the Career Trade Pact.

Sincerely,

Howard

Howard Dean, M.D.
Governor

HD/cc

cc: George Dunsmore, Commissioner of Agriculture
Dan Smith, Executive Director

NEW
ENGLAND
GOVERNORS'
CONFERENCE, INC.

76 Summer Street
Boston, Massachusetts 02110-1226
(617) 423-6900 • FAX (617) 423-7327

April 14, 1993

The Honorable Stephen Merrill
Governor of New Hampshire
State House
Concord, NH 03301

Dear Steve:

I am writing you about the Northeast Interstate Dairy Compact.

As you recall, the New England Governors' Conference, Inc. recently passed a resolution in support of the Compact. I believe the Compact holds real hope for providing price relief to our region's dairy farmers through a regulatory program of price stabilization and enhancement. At the same time the Compact ensures protection of the consumer interest. As Chair of the Conference, I have made the Compact a priority for the current sessions of the New England Legislatures because I believe it has a solid chance in Congress if we can obtain its simultaneous passage this year by the state Legislatures.

Maine and Vermont have already passed Compact legislation. Compact bills are also moving forward in Connecticut, Rhode Island and Massachusetts. I understand that in New Hampshire, the Compact bill, S.B. 106, passed the Senate by a vote of 18-4 and is currently before the House Committee on the Environment and Agriculture. I also understand that Agriculture Commissioner Stephen H. Taylor has been actively involved in drafting and promoting the Compact.

Knowing the great benefit a gubernatorial nudge can provide to a bill, I hope that you will be able to lend your personal support to the Compact. Please do not hesitate to contact me if I can provide assistance in any way.

Sincerely,

Howard Dean, M.D.
Governor of Vermont
Chair

cc: N.E. Governors
Regional Coordintors

Governor HOWARD DEAN, M.D. *Vermont* CHAIRMAN
Governor BRUCE SUNDLUN *Rhode Island* VICE CHAIRMAN
Governor LOWELL P. WEICKER, Jr. *Connecticut*
Governor JOHN R. McKERNAN, Jr. *Maine*
Governor WILLIAM F. WELD *Massachusetts*
Governor STEPHEN MERRILL *New Hampshire*

NEW
ENGLAND
GOVERNORS'
CONFERENCE, INC.

76 Summer Street
Boston, Massachusetts 02110-1226
(617) 423-6900 • FAX (617) 423-7327

March 3, 1993

Honorable Lowell Weicker
Office of the Governor
State House
Hartford, CT 06106

Dear Lowell:

I am writing you about the Northeast Interstate Dairy Compact.

As you know, the New England Governors' Conference, Inc. recently passed a resolution in support of the Compact. I believe the Compact holds real hope for providing price relief to our region's farmers without unduly burdening consumers. As Chair of the Conference, I have made the Compact a priority issue for the current sessions of the New England legislators. I made it a priority issue because I believe the Compact has a solid chance in Congress if we can obtain its simultaneous passage by the New England Legislatures this Spring.

Maine and Vermont have already passed Compact legislation. In Connecticut, the Compact is currently before the Connecticut Joint Committee on the Environment. I understand that Commissioner of Agriculture John R. H. Blum has been actively involved in drafting and promoting the Compact. Knowing well the great benefit a gubernatorial nudge can provide to a bill, I hope that you will be able to lend your personal support to the Compact.

Please do not hesitate to contact me if I can provide assistance in any way.

Sincerely,

Howard Dean, M.D.
Governor of Vermont
Chair

cc: New England Governors
Regional Coordinators

Governor	Governor	Governor	Governor	Governor	Governor
HOWARD DEAN, M.D.	BRUCE SUNDLUN	LOWELL P. WEICKER, Jr	JOHN R. McKERNAN, Jr.	WILLIAM F. WELD	STEPHEN MERRILL
Vermont	*Rhode Island*	*Connecticut*	*Maine*	*Massachusetts*	*New Hampshire*
CHAIRMAN	VICE CHAIRMAN				

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

INTER-OFFICE MEMO

DATE: 2/10/93

TO: Honorable Charles Knowles

DEPT: Chairman, House Judiciary Committee

FROM: John M. Lawrence, III, Chief

DEPT: Division of Agriculture, DEM

SUBJECT: 93-H-5240, Northeast Interstate Dairy Compact

Good afternoon Chairman Knowles and distinguished members of the Judiciary Committee.

My name is John Lawrence, and I am the Chief of the Rhode Island Division of Agriculture, DEM.

Today as we sit here to discuss this bill, I have some tragic news from the farm. Paramount Farms, a dairy farm along West Main Road in Middletown is going out of business, and all of the cows, and all of the milking equipment, and all of the tractors are being auctioned off. Today. The Associated Press has already contacted me about the sale, asking what the state is doing about this loss of another farm. This loss comes just two weeks after a dairy farmer in Bristol, Rhode Island also went out of business.

We are losing our farms, which in economic terms are primary producers, at a rapid rate. Farms preserve open space--without the public maintenance costs incurred by public open space programs. Farms employ people. Farms sculpt the landscape, and dairy farms provide a draw for our tourist industry. They add to the quality of our people's environment. Once farmland is sold and developed, that land can never be farmed again. The loss is a permanent loss to the State of Rhode Island.

I have here a graph that depicts the loss in numbers of Dairy farms in Rhode Island since 1930. The big bar depicts the 1,183 dairy farms that were here in 1930. The middle one shows the 87 dairy farms we had in 1980. The tiny bar, that barely shows up because it looks like a line, shows the 36 dairy farms of today.

Here is a closeup of the loss since 1980. The big bar (remember how small it is compared to 1930) is 1980. The

tiny bar again, shows the 36 dairy farms of today. It doesn't take a rocket scientist to see where this trend will take us ten years from today.

By law, the Division of Agriculture, DEM has been involved with farming and a number of programs designed to help halt this loss of farms and farmland. We assist local assessors with the Farm, Forest and Open space act, to provide tax relief for farmers. We work with the Agricultural Land Preservation Commission on the Purchase of Development Rights program. We assist with marketing programs, such as providing both expertise and USDA funds for the Down City Farmers Market in Providence. We encourage direct marketing of Rhode Island farm products, through roadside farmstands and pick-your own activities.

Now, for dairy farmers, this bill offers the opportunity to set a reasonable, minimal price level that the farmers themselves will receive from middlemen who buy their milk wholesale. The interstate dairy compact will help give the punch needed to get the attention of the milk wholesalers in the northeast, so that the dairy farmers can receive a price for their milk that will help them to stay in business. Rhode Island, with its 36 dairy farmers is too small to demand a minimum level of profitability on its own, but joined together with the other states of the Northeast, we have a chance.

Governor Sundlun at the Governor's Conference in Washington, D.C. on February 1, voted with the other New England Governor's to establish this Interstate Dairy Compact, but the legislation is needed along with the Governor's interest. The Northeast Dairy Compact legislation will add another needed tool to encourage farmers to keep farming in Rhode Island. I recommend that this legislation be adopted.

cc: Louise Durfee, Director, DEM

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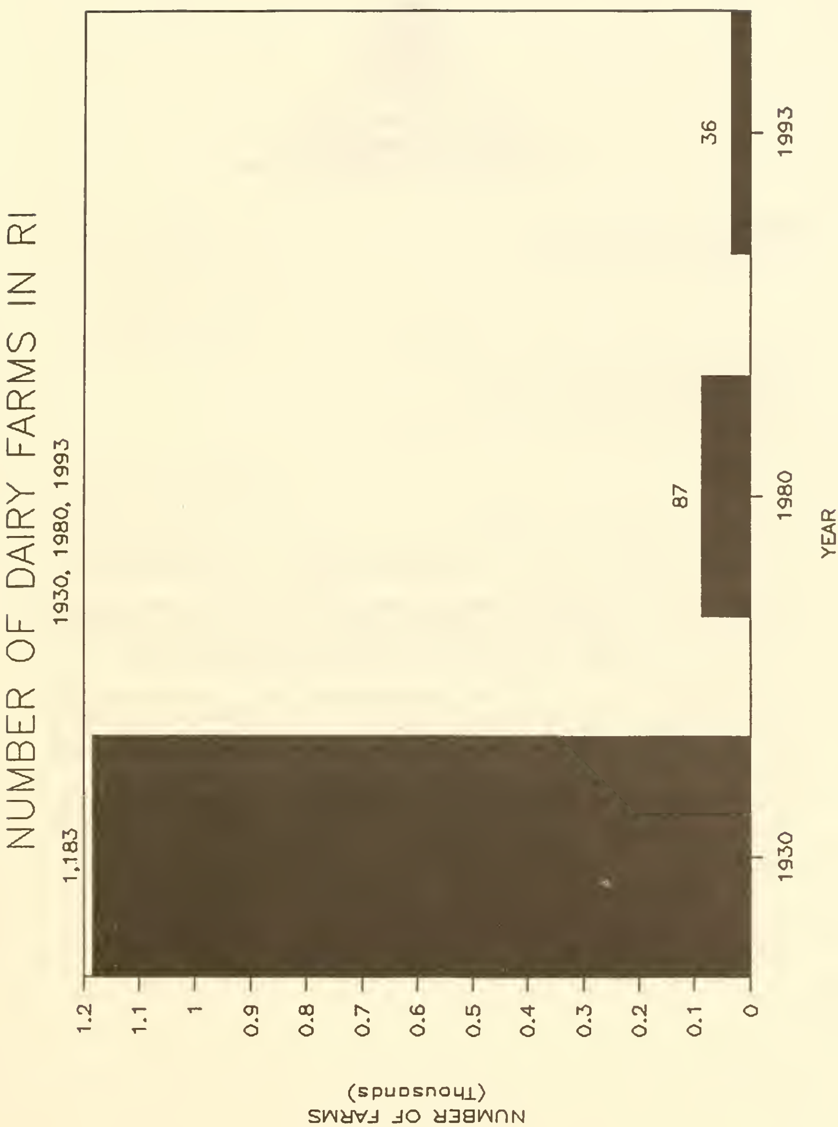
NUMBER OF DAIRY FARMS IN RI
1930, 1980, 1993
1,183
87
36
1930
1980
1993
YEAR
1.2
1.1
1
0.9
0.8
0.7
0.6
0.5
0.4
0.3
0.2
0.1
0
NUMBER OF FARMS
(Thousands)

State of Connecticut
HOUSE OF REPRESENTATIVES
LEGISLATIVE OFFICE BUILDING, ROOM 4100
HARTFORD, CONN. 06106-1591

REPRESENTATIVE THOMAS D. RITTER
SPEAKER OF THE HOUSE

SECOND DISTRICT

The Honorable Charles F. Flaherty
Speaker of the House
Massachusetts General Court
State House
Boston, Massachusetts 02133

July 6, 1993

Dear Representative Flaherty,

I am writing to ask you to move forward with the Northeast Interstate Dairy Compact in the Massachusetts General Court.

As you know, in order to ratify the compact, all six New England states must approve uniform legislation. Four states, including the state of Connecticut have already passed compact bills. Rhode Island is scheduled to act on the compact within the week.

This compact is necessary for resolving the pricing problems facing the farmers in New England. The compact will protect both farmers and consumers from price fluctuations. The compact will also reduce the litigation arising from each state's efforts to regulate dairy prices.

This compact shall serve as a model for regional cooperation in our New England states. I urge you to move this issue to approval in the Massachusetts legislature.

Regards,

Thomas D. Ritter
Speaker of the House

State of Connecticut
HOUSE OF REPRESENTATIVES
STATE CAPITOL
HARTFORD, CONN. 06106

REPRESENTATIVE ARTHUR J. O'NEILL
SIXTY-NINTH DISTRICT

1468 BUCKS HILL ROAD
SOUTHBURY, CONNECTICUT 06488

HOME: 264-3951
CAPITOL: 240-8787
TOLL FREE: 1-800-842-8270

MEMBER
ENERGY AND PUBLIC UTILITIES COMMITTEE
FINANCE, REVENUE, AND BONDING COMMITTEE
REGULATIONS REVIEW COMMITTEE

May 25, 1993

Mr. Daniel Smith
Northeast Interstate
Dairy Compact Committee
P.O. Box 1058
Montpelier, Vermont 05601

Dear Mr. Smith:

Thank you for your letter expressing your support for House Bill 6132, the Northeast Interstate Dairy Compact.

I am writing back to express my support for this legislation.

Should I be of any assistance to you on this or any other matter please call or write me.

Sincerely,

Arthur J. O'Neill

Arthur J. O'Neill
State Representative

AJO:pjy

State of Connecticut

REPRESENTATIVE THOMAS S. LUBY
MAJORITY LEADER
HOUSE OF REPRESENTATIVES
EIGHTY-SECOND DISTRICT

LEGISLATIVE OFFICE BUILDING
SUITE 4100
HARTFORD, CONNECTICUT 06106-1591

June 28, 1993

The Honorable Richard Voke
House Majority Leader
Massachusetts General Court
State House
Boston, MA 02133

Dear Representative Voke:

I write to ask for your assistance in gaining approval in the Massachusetts legislature of the Northeast Interstate Dairy Compact.

As you know, before the compact can be presented to Congress for ratification, uniform legislation must be approved by each of the six New England states. At this point, compact bills have passed in Vermont, New Hampshire, Maine, and Connecticut. Rhode Island is scheduled to join the four states within the next week

Support for the compact in Massachusetts is critical. Coordinated regional action is necessary to resolve the chronic price problem facing New England's dairy farmers. The interstate compact would stabilize and enhance dairy farm prices, protecting both farmers and consumers from price fluctuations. In addition, the compact would resolve the litigation that has hindered all previous individual state efforts to regulate dairy prices, including your current program in Massachusetts.

We have all worked very hard throughout New England to bring this agreement to the verge of adoption. I urge you to enlist the support of your colleagues for this important effort in regional cooperation.

Sincerely,

Tom

Thomas S. Luby

Printed on recycled paper

State of Connecticut
HOUSE OF REPRESENTATIVES
STATE CAPITOL
HARTFORD, CONN. 06106-1591

REPRESENTATIVE JESSIE G. STRATTON
SEVENTEENTH DISTRICT

33 BAHRE CORNER ROAD
CANTON, CONNECTICUT 06019
TELEPHONE
HOME 693-8274
CAPITOL: 240-0440

CHAIR
ENVIRONMENT COMMITTEE
MEMBER
EXECUTIVE & LEGISLATIVE NOMINATIONS
COMMITTEE
GENERAL LAW COMMITTEE

June 30, 1993

The Honorable Steven Angelo
Chair, Natural Resources Committee
Massachusetts General Court
State House
Boston, MA 02133

Dear Representative Angelo:

I understand the Massachusetts legislature is considering approval of the Northeast Interstate Dairy Compact. I write seeking your assistance in this effort.

As you know, before the compact can be presented to Congress for ratification, uniform legislation must be approved by each of the six New England states. At this time, compact bills have passed in Vermont, New Hampshire, Maine, and Connecticut. Rhode Island is scheduled to join the four states within the next week.

Obviously, adoption by Massachusetts is vital. I do believe that coordinated regional action is necessary to resolve the chronic price problem facing New England's dairy farmers. The interstate compact could stabilize farm prices in a manner that would recognize the real costs of production. For those reasons, I actively assisted in getting legislation passed in CT.

Many individuals have worked hard throughout New England to achieve this regional agreement. I urge you to enlist the support of your colleagues in this effort.

Good luck. If CT can help in any way, please call me.

Sincerely,

Maine Department of Agriculture, Food and Rural Resources

Deering Building, State House Station 28, Augusta, Maine 04333-0028

Maine produces.

Governor
John R. McKernan, Jr.

Commissioner
Bernard W. Shaw
Tel: 207 289-3871

Deputy
Carl W. Flora
Tel: 207 289-3871

Asst. to the Commissioner for Resource Management
Rodney L. McCormick
Tel: 207 289-3511

Bureaus

Agricultural Production & Marketing
Peter N. Mosher
Tel: 207 289-3117

Public Service
Peter W. Curra
Tel: 207 289-3219

March 24, 1993

Senator Robert Durand
Representative Steven Angelo
Co-Chairmen, Joint Committee on
Natural Resources and Agriculture
Room 473F
Massachusetts State House
Boston, Massachusetts 02133

Gentlemen:

I am writing to urge your support and the support of the members of the Joint Committee on Natural Resources and Agriculture for the Interstate Dairy Compact legislation which your committee will hear on Tuesday, March 30, 1993.

History has taught us that regional problems can be successfully dealt with by a unified response within the effected region. While acknowledging the importance of local efforts resulting in action to correct deficient milk prices, I recognize that the duration of these actions are generally limited by rapidly fluctuating markets and litigation by the courts.

It appears that the Interstate Dairy Compact is the one vehicle which is presently being enacted in several legislatures which has the hope of a long term solution.

Our legislature has acted and I strongly encourage you to use your influence in the passage of the bill in the Massachusetts General Court.

Sincerely,

Bernard W. Shaw
Commissioner

BWS-vad
cc: Peter W. Curra

FAX 207 289-7548
TDD 289-4470

Southern New England
Farm Credit, ACA

56 Town Line Road, P.O. Box 190
Rocky Hill, CT 06067-0190
203/529-9896

March 8, 1993

Daniel Smith
Executive Director
Northeast Interstate
Dairy Compact Committee
P. O. Box 1058
Montpelier, VT 05601

Dear Dan,

At our recent Board of Directors meeting we discussed your letter to me of February 11, 1993. After considerable discussion, the Board voted to contribute $250 towards the financial well-being of the Northeast Interstate Dairy Compact Committee. While I had hoped that this would be more substantial, at least it represents our support of the Committee's efforts. As you indicated in your letter, if we can be of help during the legislative hearings here in Connecticut or Massachusetts, we would be willing to help in anyway possible.

Good luck with your project. Once again, if we can be of any help do not hesitate to call on me.

Sincerely,

Clint

Clinton W. Charter
President & CEO

NORTHEAST INTERSTATE DAIRY COMPACT COMMITTEE

EXECUTIVE DIRECTOR
DANIEL SMITH, ESQ.

P.O. BOX 1058
MONTPELIER, VT 05601
PH. (802) 229-1941
FAX (802) 229-2028

March 18, 1993

Honorable Russell Bramley
190 Commerce Drive
Warwick, RI 02886

Dear Representative Bramley:

You will soon be asked to vote on House Bill No. 5240, the Northeast Interstate Dairy Compact. On behalf of a broad coalition of people directly and indirectly interested in maintaining the viability of dairy farming in Rhode Island and New England, I write to ask for your support.

House Bill No. 5240 will authorize Rhode Island's participation in the Dairy Compact. Under the Compact, each of the New England states, including Rhode Island, would be represented on an interstate commission with authority to regulate the price of milk received by dairy farmers in our region. The purpose of the price regulation is to stabilize and enhance the price farmers receive. This regulation is necessary because, under current federal regulation and market conditions, dairy farm prices fluctuate wildly and most often do not cover cost of production.

The Compact is carefully crafted to protect consumer interests. Most importantly, each of the region's consuming states has equal voting power in the decision to establish a price regulation. If these consumer states do not approve the pricing regulation, no price will be imposed on the market.

The draft Compact has already passed the states of Vermont and Maine. The draft has also passed the New Hampshire Senate, and easy passage is expected in the House. The draft is also moving through the political process in Connecticut and Massachusetts, in parallel fashion with Rhode Island.

In recognition of its importance to both Rhode Island and the region, Governor Sundland recently voted with his fellow New England Governors to adopt a resolution in support of the compact. His staff took an active role in the bill's Committee process, a further indication of the Governor's support.

I hope you will vote in favor of H.5240, allowing Rhode Island to join her fellow New England states in approving the Compact. Thank you for your support.

Sincerely,

Dan Smith

Daniel Smith, Esq.
Executive Director

NORTHEAST INTERSTATE
DAIRY COMPACT COMMITTEE

EXECUTIVE DIRECTOR
DANIEL SMITH, ESQ.

P.O. BOX 1058
MONTPELIER, VT 05601
PH. (802) 229-1941
FAX (802) 229-2028

March 23, 1993

Honorable George D. Carulo
Majority Leader
Rhode Island House of Representatives
Providence, RI 02903

Dear Representative Carulo:

House No. 5240, the Northeast Interstate Dairy Compact will be coming up for a vote shortly. In recognition of both its local and regional importance, Governor Sundland and his staff have been actively involved in the Compact effort. Knowing well the importance of your attention to the Compact bill for its passage in Rhode Island, I hope you will be able to give it your support.

The Compact bill would authorize Rhode Island's participation in an interstate agreement to regulate the price New England, including Rhode Island, dairy farmers receive for their milk. This price regulation is critical to their survival. Farmers have long dealt with chronically low and wildly fluctuating prices.

The Compact would stabilize the marketplace to the benefit of both consumers and farmers. While its main focus is on farm prices, the Compact is crafted carefully to protect consumers. Most significantly, the region's primary consumer states, including Rhode Island, would be represented equally on the Compact's interstate regulatory commission. If these consuming states do not approve a pricing regulation, none will not be imposed.

Vermont and Maine have already authorized their participation in the Compact. The bill has also passed the New Hampshire Senate, and easy passage is expected in the House. The bill is also moving forward in the legislatures of Massachusetts and Connecticut.

Thank you for your attention to House Bill No. 5240. I hope you will actively support the bill, and allow Rhode Island to join her fellow New England States in working cooperatively on this important issue.

Sincerely,

Dan Smith

Daniel Smith
Executive Director

NORTHEAST INTERSTATE
DAIRY COMPACT COMMITTEE

EXECUTIVE DIRECTOR
DANIEL SMITH, ESQ.

P.O. BOX 1058
MONTPELIER, VT 05601
PH. (802) 229-1941
FAX (802) 229-2028

March 23, 1993

Honorable John B. Harwood
Speaker
Room 323, State House
Providence, RI 02903

Dear Speaker Harwood:

House No. 5240, the Northeast Interstate Dairy Compact will be coming up for a vote shortly. In recognition of both its local and regional importance, Governor Sundland and his staff have been actively involved in the Compact effort. Knowing well the importance of your attention to the Compact bill for its passage in Rhode Island, I hope you will be able to give it your support.

The Compact bill would authorize Rhode Island's participation in an interstate agreement to regulate the price New England, including Rhode Island, dairy farmers receive for their milk. This price regulation is critical to their survival. Farmers have long dealt with chronically low and wildly fluctuating prices.

The Compact would stabilize the marketplace to the benefit of both consumers and farmers. While its main focus is on farm prices, the Compact is crafted carefully to protect consumers. Most significantly, the region's primary consumer states, including Rhode Island, would be represented equally on the Compact's interstate regulatory commission. If these consuming states do not approve a pricing regulation, none will not be imposed.

Vermont and Maine have already authorized their participation in the Compact. The bill has also passed the New Hampshire Senate, and easy passage is expected in the House. The bill is also moving forward in the legislatures of Massachusetts and Connecticut.

Thank you for your attention to House Bill No. 5240. I hope you will actively support the bill, and allow Rhode Island to join her fellow New England States in working cooperatively on this important issue.

Sincerely,

Dan Smith

Daniel Smith
Executive Director

NORTHEAST INTERSTATE
DAIRY COMPACT COMMITTEE

EXECUTIVE DIRECTOR
DANIEL SMITH, ESQ.

P.O. BOX 1058
MONTPELIER, VT 05601
PH. (802) 229-1941
FAX (802) 229-2028

March 23, 1993

Honorable Suzanne Henseler
Majority Whip
Rhode Island House of Representatives
Providence, RI 02903

Dear Representative Henseler:

House No. 5240, the Northeast Interstate Dairy Compact will be coming up for a vote shortly. In recognition of both its local and regional importance, Governor Sundland and his staff have been actively involved in the Compact effort. Knowing well the importance of your attention to the Compact bill for its passage in Rhode Island, I hope you will be able to give it your support.

The Compact bill would authorize Rhode Island's participation in an interstate agreement to regulate the price New England, including Rhode Island, dairy farmers receive for their milk. This price regulation is critical to their survival. Farmers have long dealt with chronically low and wildly fluctuating prices.

The Compact would stabilize the marketplace to the benefit of both consumers and farmers. While its main focus is on farm prices, the Compact is crafted carefully to protect consumers. Most significantly, the region's primary consumer states, including Rhode Island, would be represented equally on the Compact's interstate regulatory commission. If these consuming states do not approve a pricing regulation, none will not be imposed.

Vermont and Maine have already authorized their participation in the Compact. The bill has also passed the New Hampshire Senate, and easy passage is expected in the House. The bill is also moving forward in the legislatures of Massachusetts and Connecticut.

Thank you for your attention to House Bill No. 5240. I hope you will actively support the bill, and allow Rhode Island to join her fellow New England States in working cooperatively on this important issue.

Sincerely,

Dan Smith

Daniel Smith
Executive Director

VSAA

Vermont Ski Areas Association
26 State Street
Post Office Box 368
Montpelier, Vermont 05601
(802) 223-2439
FAX (802) 229-6917

April 6, 1994

The Honorable Patrick J. Leahy
United States Senate
Washington, DC 20510

Dear Senator Leahy:

On behalf of the Vermont Ski Areas Association, thank you for your sponsorship of the Northeast Interstate Dairy Compact. The Association has provided financial assistance to the Compact effort based on our understanding that the Compact provides real promise for enhancing and stabilizing dairy farm income. We in the tourist industry well know the importance to our industry of maintaining the continuing viability of Vermont's dairy farms.

Please do not hesitate to contact me if the Association can be of assistance in the Congressional process. Thank you again for your support.

Sincerely,

Joseph A. Parkinson
Executive Director

cc: Daniel Smith

NORTHWEST VETERINARY ASSOCIATES, INC.
R.D.#1, Box 9
St. Albans, Vermont 05478
(802) 524-3222

May 9, 1994

Sen. Patrick Leahy
199 Main Street
Burlington, Vermont 05401

Dear Senator Leahy:

The Northeast Interstate Dairy Compact Committee has requested that a veterinarian comment on the impact of the Compact on my business. If the milk price was increased $0.50 to $1.00 per cwt., I predict the farmers would service their debt to me in a more timely fashion. My improved business cash flow would enable investment in personnel and advances in technology.

Geographically, top-notch veterinary students specializing in dairy practice exist mainly in the mid-west and far west. I grew up in Iowa and was attracted to Vermont 20 years ago due to its stong dairy industry at that time. Our prices have since fallen to and production costs risen above the midwestern levels. Top midwest students are receiving starting salaries 33 percent above what I can afford. Equine and small (pet) practices are more lucrative than the type of veterinary practice my dairy clients can afford. Top veterinary students have lost interest in farm practice for this reason, and we face a shortage of qualified food animal veterinarians.

To survive in dairy farming, a farmer must keep current with new innovations, the introduction of which are partially a veterinarian's responsibility. For the past 10 years my business has invested thousands of dollars in continuing education - with little return due to farms' low net income. Computerized recordkeeping of production and finances, utilization of AI sires and Embryo Transfer technology could improve the efficiency and production on many farms, but the farmer has a hard time meeting everyday expenses and is cash poor for computer interpretative services that could bring him a 7 to 1 return on investment. Chronic financial problems inhibit New England farmers from participation, resulting in slowed dairy industry progress.

In closing, legislation such as the Northeast Dairy Compact would have a genuine positive impact on the future of my veterinary practice and I am most appreciative of your efforts.

Sincerely yours,

Kent E. Henderson

cc: Sen. James Jeffords

Vermont Public Interest Research Group

VPIRG

43 State Street
Montpelier, Vermont 05602
Tel. (802) 223-5221
Fax. (802) 223-6855

June 3, 1994

Honorable Patrick Leahy
Committee on Agriculture, Nutrition, and Forestry
647 Dirksen
Senate Office Bldg.
Washington, DC 20510

Dear Senator Leahy:

On behalf of the Vermont Public Interest Research Group, I write to express my support for the Northeast Interstate Dairy Compact currently before the Senate Judiciary Committee. Our support stems from our belief that the Compact will directly serve the consumer interest and, simultaneously, ensure its protection.

The Compact commission would benefit the consumer interest by eliminating the chronic fluctuations in the federal price structure which have over time caused an unnatural ratcheting up of consumer prices. This phenomenon has been documented by your GAO study of a few years back and by a recent Agriculture Department research paper. The Compact establishes an effective regulatory response to this problem.

The Compact protects the consumer interest by the inclusion of a number of provisions which ensure that the region's consumers would substantially control the commission's regulatory process. For example, consumer representatives from each state will sit on the Compact commission. Additionally, a two-thirds vote of the six Compact states is required before any price regulation can be implemented. Given that four of the six states are milk importing states, this supermajority requirement provides a significant protection. There are a number of other provisions as well.

The Compact strikes a remarkable balance between the farmer and consumer interests. It is in this sense a true Compact between seemingly disparate interest groups. Please feel free to share this letter with your fellows members of the Judiciary Committee. I hope the Committee will send the bill to the Senate floor with a strong vote of support.

Thank you for you attention to this issue.

Sincerely,

Rob Stuart
Executive Director

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Burlington, Vermont 05401
(802) 862-9600

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(802) 223-4223 (Fax)

October 8, 1992

Daniel Smith, Executive Director
Committee for Enactment of the
Northeast Interstate Dairy Compact
P.O. Box 1058
Montpelier, VT 05601

Dear Dan:

Please excuse my delay in responding to your letter of September 4. I left for England on September 16 for two and a half weeks, and things were too hectic prior to my departure to give your request adequate consideration.

The Vermont Land Trust would like to support your efforts to increase the number of northeastern states that are willing to sign into the compact. As our Agricultural Director Polly Whitcomb has pointed out, VLT has lent its support to several initiatives to help farmers control costs, such as the Agriculture Vermont Limited and Pro Dairy programs. Income is the other part of the equation, and this Compact is one of the few proposals that may have an impact on milk prices.

I am enclosing our check for $250. While I realize that your request was for more money, VLT has many demands on its resources this year. Good luck with your efforts and please keep us advised on your progress.

Sincerely,

Darby

Darby Bradley
President

cc: Polly Whitcomb

VERMONT HOUSING and CONSERVATION COALITION
P.O. Box 989
Montpelier, VT 05601

December 17, 1992

Dan Smith
Committee For Enactment of
Northeast Interstate Dairy Compact
P.O. Box 1058
Montpelier, VT 05601

Dear Mr. Smith,

The Vermont Housing and Conservation Coalition supports your effort to pass the Northeast Interstate Dairy Compact.

Our membership, more than 60 non-profit Vermont organizations, works to conserve and protect important Vermont lands and to preserve and create affordable housing. Twice during our coalition's regular monthly meetings, members have discussed how best to demonstrate support for your committee's effort. The coalition has never made a monetary donation to any of the numerous worthwhile housing, agricultural or land conservation projects that need support.

The coalition has decided not to break with that tradition, though individual members of the coalition have given monetary support to your committee. In place of a donation, the Vermont Housing and Conservation Coalition offers the following statement of support.

Sincerely,

Darby Bradley
Co-chair

Ginny McGrath
Co-Chair

VERMONT HOUSING and CONSERVATION COALITION
P.O. Box 989
Montpelier, VT 05601

December 17, 1992

Statement of Support

The Vermont Housing and Conservation Coalition is a diverse group of non-profit Vermont organizations working for affordable housing, land conservation, agriculture and historic preservation.

This letter is a statement of our support for passage of the Northeast Interstate Dairy Compact.

Members of our coalition understand the need for a more realistic and equitable method of paying dairy farmers for their milk. The federal price support system has failed the Northeast. Dan Smith and others have formed the Committee for Enactment of the Northeast Interstate Dairy Compact. Their goal is to obtain state adoption and Congressional ratification of the compact.

Our coalition believes that the health of dairy farming is not solely the concern of farm groups. Agriculture generally and dairy farming specifically are key to the very fabric of Vermont and the Northeast. We must do everything we can to ensure a stable pricing method for farmers that takes into account production costs as well as market fluctuations.

We support the mission of a regional dairy compact and applaud the efforts of the newly formed committee to work for its passage.

Sincerely,

Darby Bradley
Co-chair

Ginny McGrath
Co-Chair

VERMONT HOUSING AND CONSERVATION COALITION

The Coalition is a private, self-funded organization. It receives no state funds. Coalition members are non-profit Vermont organizations committed to creating and preserving affordable housing for Vermonters and conserving and protecting Vermont's agricultural land, historic properties, important natural areas and recreational lands.

Addison County Planning Commission
Affordable Housing Coalition
Alliance for the Mentally Ill of Vermont
Barre Neighborhood Housing Services, Inc.
Bennington Historic Preservation Commission
Bennington Regional Preservation Trust
Bennington-Rutland Opportunity Council
Brattleboro Area Community Land Trust
Burlington Community and Economic Dev. Office
Burlington Community Land Trust
Burlington Housing AuthorityCatamount Trail Assoc.
Cathedral Square Corporation
Central Vermont Community Action Council
Central Vermont Community Land Trust
Champlain Valley Mutual Housing Federation
Champlain Valley Office of Economic Opportunity
Coalition of Vermont Elders (COVE)
Countryside Institute
Franklin/Grand Isle Community Action
Gilman Housing Trust
The Green Mountain Club
Hartford Housing Authority
Highgate Non-profit
Hinesburg Land Trust
Housing Foundation, Inc.
Housing Vermont
Lake Champlain Housing Development Corporation
Lamoille Housing Partnership
Legislative Committee of Northeastern Coops.
Mad River Valley Planning District
Mountain Valley Region of Vermont Land Trust
Mettowee Valley Conservation Project
Middlebury Land Trust
Northeast Kingdom Community Action Agency
Northern Community Housing Corporation
Northern Community Investment Corporation
Northgate Non-profit
Northwest Housing Associates
Ottauquechee Non-profit Housing Corp.
Preservation Trust of Vermont
Regional Affordable Housing Corporation (Bennington)
Richmond Land Trust
Rockingham Area Community Land Trust
Rural Vermont
Rutland County Community Land Trust
Rutland West Neighborhood Housing Services, Inc.
Southeastern Vermont Community Action Agency
Shared Housing Alternatives for Rural Elders
Twin Pines Cooperative Housing
Twin State Housing Trust
Upper Valley Land Trust
Vermont CAP Directors Association
Vermont Community Loan Fund
Vermont Farm Bureau
Vermont Land Trust
Vermont Low Income Advocacy Council
Vermont Natural Resources Council
Vermont Nature Conservancy
Vermont Public Interest Research Group
Vermont Samaritan Corporation
Vermont Tenants, Inc.
Winooski Community Development Office
Winooski Valley Park District
Working Land Fund

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March 23, 1994

Representative Joseph Moakley
235 Cannon House Office Building
Washington, DC 20515

Dear Representative Moakley:

We write to express our support for the Northeast Interstate Dairy Compact. The Compact addresses the chronic pricing problem confronting our region's dairy farmers. It would allow for the enhancement and stabilization of their price, yet do so without adverse impact on our industry. The Compact will serve the long-term interest of the entire New England dairy industry, and we urge your support.

As you know, we are the largest supermarket chain in New England. We process many of our products, including fluid milk, which represents a major component of our business. It is thus in our best interest that our supplying dairy farms remain stable and productive.

Despite the importance of doing so, in the current marketplace it is often very difficult to pay farmers a price which ensures their financial well-being and still preserves our competitive position. The Compact will resolve the defects in the regulatory component of the marketplace which are causing this problem. The resulting stability will benefit all members of the industry, both farmers and processors, alike.

Because of its importance to our industry, we have worked closely with the Compact's sponsors and supported its passage by the Massachusetts Legislature last year. We hope you will serve as a co-sponsor of the bill, and give it your active support throughout the Congressional approval process.

Sincerely,

Charles F. Arbing

Charles F. Arbing
Vice President, Manufacturing/Transportation

Kevin Compton
88 Bigelow Street
Brighton, MA 02135

April 20, 1994

Senator Edward M. Kennedy
315 Russell Senate Office Building
Washtington, D.C. 20510
Attn: Cary Brick

I am writing to urge you to sponsor the New England Interstate Dairy Compact.

As a milk consumer, I am concerned about what I've read in the papers suggesting that the Massachusetts dairy industry is dying. I am worried that if the trend continues, I will end up paying truckers instead of farmers, because the milk will be imported from out of state. The Dairy Compact which passed the Massachusetts state legislature last year would slow, if not reverse this alarming trend. At the very least, it will help support the New England Market so that the milk we drink in New England, comes from New England.

I know we don't have dairy farms in our district, and few in our state, but the compact bill is still good for all the people in our district who consume milk. Since we all drink milk, and want to support our state, you should support this bill.

Thank you for your consideration of support of this bill.

Sincerely,

Kevin Compton

Kevin Compton

Dairymen

10140 Linn Station Rd., Louisville, Ky. 40223-9990

Dairymen, Inc. General Office
Phone (502) 426-6455

July 29, 1994

The Honorable John Bryant, Chairman
House Judiciary Subcommittee on
Administrative Law and Governmental Relations
B351-A House Rayburn Office Building
Washington, D.C. 20515

Dear Congressman Bryant:

On behalf of Dairymen, Inc. I write to express our support for H.R. 4560, the Northeast Interstate Dairy Compact.

For many years, we in the Southeast also experienced the benefits of state milk regulatory pricing programs. These programs did provide some added stability to dairy farmer milk prices and consequently to the state and regional industry as a whole.

Over time, as milk increasingly moved in interstate commerce, practically all of the state regulatory pricing programs have fallen victim to the Constitutional law of interstate commerce. Absent these state regulatory pricing programs, milk prices are now being set at minimum levels primarily by federal law. Dairy farmers in the southeast, as well as throughout the country, have felt the price squeeze brought about in part by this development in the regulated marketplace.

The Dairy Compact before your Committee represents an important alternative solution to this pricing problem. The Compact can help restore the vitality of the state regulatory pricing function, in a constitutional manner. The Compact, while accounting for the interest of both producers and consumers, will result in the regulation of only Class I, or beverage milk, and will regulate only a regional market. The Compact will not adversely affect our national regulatory program.

Because the New England fluid milk market is relatively small, the proposed Compact can serve as a test of the concept of regional price regulation with little risk to the Southeast or to the national regulatory program. Therefore, we support your Committee's approval of the Compact.

Sincerely yours,

James E. Mueller

James E. Mueller
Executive Vice President and
Chief Executive Officer

JEM/pja

** TOTAL PAGE.002 **

Carolina Virginia Milk Producers Association

1320 Harding Place • Charlotte, NC 28204
(704) 334-9558 • Fax (704) 377-0531

August 12, 1994

Honorable Bob Inglis
1237 Longworth
House Office Bldg.
Washington, DC 20515-3312
Attn: Beth Atwater

Dear Representative Inglis,

I am writing representing Carolina Virginia's South Carolina dairy farmer members to ask for your support for the Northeast Interstate Dairy Compact that is under consideration by the House Sub Committee on Administrative Law and Governmental Relations. This Bill (HR4560) gives a group of States in the Northeast the ability to set dairy farmer prices at levels that will ensure a healthy local dairy farm industry.

The Southeast dairy industry may be able to utilize a similar Compact concept to help some local farmers. During the last twelve years the number of dairy farms in South Carolina has dropped by about 50%. This drop is due to the difficulty South Carolina dairy farms have competing in a National milk market.

I will be glad to communicate your position on this bill to our South Carolina constituents. If you have any questions or discussion regarding this, please feel free to call.

Sincerely,

Robert Shore
General Manager

RS/nl

cc: Nicole Jenkins
Office of the Sub Committee on
Administrative Law and Governmental Relations
Fax Number (202) 225-3673

Larry McKensie, South Carolina Farm Bureau
Louis Harrison, Eidsto Milk Producers
Todd Arant, Eidsto Milk Producers
David Jones, Dairymen, Inc.

bcc: Danny Smith

MID- AMERICA DAIRYMEN, INC.
3253 E. CHESTNUT EXPRESSWAY
SPRINGFIELD, MO. 65802-2584
(417) 865-7100

Honorable Herb Kohl
330 Senate Hart Bldg.
Washington, D.C. 20510-4904

Dear Senator Kohl,

We are writing to express the support of Mid-America Dairymen Inc. for the Northeast Interstate Dairy compact . As you know the compact has been adopted by the six New England states in identical form. We appland this local effort to address the chronic and persistent problem of insufficient and unstable dairy farm income.

As the second largest dairy farmer owned cooperative in Wisconsin, we are aware of the income problems facing our fellow farmers in New England. While the compact would not provide a direct benefit , it will serve as a pilot project for the interstate, over-order, regulatory approach. As the New England fluid market is small and isolated from us, it is an experiment with no risk little downside cost to us.

We ask you support the Compact when it comes before the Judiciary Committee. The members of Mid-Am in Wisconsin and through our membership area appreciate the job you are doing for us in the Senate.

Sincerely,

David L. Parrish

David L. Parrish
Vice-President
Mid-America Dairymen,Inc.

FAXED 5-19-94

FAX MEMO

PAGER________ DATE 5/20/94 FAX #________
TO Tom Cosgrove
FROM Bob Gray
CO. CNEC
PH #________ FAX #________

FYI

Vermont State Grange, Inc.

Patrons of Husbandry

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OFFICE OF President
Richard Brouillette
RFD # 1 Box 630
Sheldon, Vermont 05483
Tel; 1-802-933-4676
Fax: 802-933-4150

April 26,1994

Dan Smith
Dairy Compact Center
PO Box 1058
Montpelier, VT 05601
Fax; 229-2028

Dear Mr. Smith,

Enclosed copy of National Grange Resolution adopted November, 1993

at National Grange Convention in Cleveland, Ohio.

DAIRY COMPACTS

WHEREAS, ratification of the Northeast Dairy Compact by the United States Congress is necessary before it will become effective; therefore be it

RESOLVED; that the National Grange urge the passage of Regional Dairy Compacts, such as the Northeast Dairy Compact by the United States Congress.

Sincerely,

Richard

Richard Brouillette, President
Vermont State Grange

RB/mb

Legislative Director- Washington D.C.
Robert M. Frederick
Tel: (202)-628-3507-Office
(703)-536-6255- Resident
Fax: (202)-347-1091

April 14, 1994

Honorable Arlen Specter
303 Senate Hart Building
Washington, DC 20510-3802

Dear Senator Spector:

The Pennsylvania Farmers Union wishes to express our support for the Northeast Interstate Dairy Compact which will soon come before you in the Judiciary Committee.

The Compact is being proposed by the six New England states. These states make up Federal Order 1. Order 1 is quite small, and the Compact would have limited effect on the overall dairy industry. The Compact could serve as a pilot project for whether a joint regulation by other states could set over-order premiums and may effectively address the problem of chronically low dairy farm prices.

The Compact is drafted so as to allow Pennsylvania to join following Congressional approval. If the pilot project proves successful, we would then be able to join and participate. Pennsylvania Farmers' Union feels this is a worthwhile venture.

The Compact provides promise for assisting our fellow beleaguered dairy farmers in the Northeast. While we wish to support the compact, it is not an indication of any lessening of our resolve to press for comprehensive national reform in the dairy industry. We do hope you will help the New England states in taking this smaller, regional first step.

Please support the Compact when it comes before you.

Sincerely

Robert C. Junk Jr
President

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